(14)

No. 98-184-CSY Title: Wyoming, Petitioner
v.
Sandra Houghton

Docketed: July 28, 1998 Court: Supreme Court of Wyoming

Entry	Date	Proceedings and Orders
	Jul 27 1998	Petition for writ of certiorari filed. (Response due August 27, 1998)
	Aug 26 1998	Brief of respondent Sandra Houghton in opposition filed.
	Aug 26 1998	Motion of respondent for leave to proceed in forma pauperis filed.
	Sep 9 1998	DISTRIBUTED. September 28, 1998
	Sep 29 1998	Motion of respondent for leave to proceed in forma pauperis GRANTED.
	Sep 29 1998	Petition GRANTED. The brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, November 10, 1998. The brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 8, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 29, 1998. Rule 29.2 does not apply. SET FOR ARGUMENT January 12, 1999. **********
	Oct 26 1998	Motion of respondent for appointment of counsel filed.
	Nov 2 1998	DISTRIBUTED. November 6, 1998 (Page 14)
	Nov 9 1998	Motion for appointment of counsel GRANTED and it is ordered that Donna D. Domonkos, Esq., of Cheyenne, Wyoming, is appointed to serve as counsel for the respondent in this case.
	Nov 9 1998	Brief amicus curiae of National Association of Police Organizations filed.
	Nov 10 1998	Brief of petitioner Wyoming filed.
	Nov 10 1998	Joint appendix filed.
	Nov 10 1998	Brief amicus curiae of United States filed.
	Nov 10 1998	Brief amici curiae of Kentucky, et al. filed.
	Nov 10 1998	Brief amicus curiae of Criminal Justice Legal Foundation filed.
	Nov 23 1998	CIRCULATED.
	Dec 2 1998	Record filed.
	Dec 4 1998	Motion of Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
	Dec 7 1998	Brief of respondent Sandra Houghton filed.
	Dec 8 1998	Brief amicus curiae of National Association Criminal Defense Lawyers filed.
	Dec 8 1998	Brief amicus curiae of Rutherford Institute filed.
	Dec 8 1998	Brief amici curiae of Legal Aid Society of New City, et al. filed.
	Dec 14 1998	Motion of Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument

No. 98-184-CSY

Entry	Date	Proceedings and Orders
		GRANTED.
	Dec 14 1998	Record filed.
	Dec 22 1998	Reply brief of petitioner Wyoming filed.
	Jan 12 1999	ARGUED.

Supreme Court, U.S.
FILED
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No. _____

In The

Supreme Court of the United States

October Term, 1997

THE STATE OF WYOMING,

Petitioner,

v.

SANDRA HOUGHTON,

Respondent.

On Petition For Writ Of Certiorari To The Wyoming Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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July 27, 1998

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QUESTION PRESENTED FOR REVIEW

Whether the "automobile exception" to the Fourth Amendment's warrant requirement allows police to conduct a warrantless search of a passenger's personal belongings – in this case a purse – located inside the passenger compartment of a vehicle lawfully stopped for traffic violations, when police have developed probable cause to search the vehicle generally for controlled substances but have no probable cause specific to the purse or passenger.

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PETITION FOR WRIT OF CERTIORARI

The State of Wyoming, as petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the Wyoming Supreme Court entered on April 3, 1998, a timely petition for rehearing having been denied on April 28, 1998. Petitioner further suggests that this Court dispose of the case with a summary disposition on the merits. Sup. Ct. R. 16.1.

OPINION BELOW

The opinion of the Wyoming Supreme Court is reported at 956 P.2d 363 (Wyo. 1998) and is reproduced in the Appendix hereto, pages App. 1-25. The court's order denying rehearing is reproduced in the Appendix, page App. 26.

JURISDICTION

The judgment of the Wyoming Supreme Court was entered on April 3, 1998 and its order denying a petition for rehearing was entered April 28, 1998. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

In the early morning hours of July 23, 1995, officer Delane Baldwin of the Wyoming Highway Patrol conducted a traffic stop on a vehicle traveling east on Interstate 25 in Natrona County. Officer Baldwin observed that the car was speeding and had a burned out brake light. After stopping the car, a 1977 Cadillac, officer Baldwin contacted the driver, David Young. There were two female passengers in the car, one of whom was the respondent, Sandra Houghton. All the occupants were on the front seat, with Ms. Houghton located at the end next to the passenger door. (Trial Trans. Vol. I, pp. 59-63, 66, 90).

Officer Baldwin asked Mr. Young for his driver's license, registration and insurance certificate. At this point, the officer noticed a hypodermic syringe plainly visible in Mr. Young's left front shirt pocket. Officer Baldwin informed Mr. Young that he had seen the syringe and was going to retrieve his gloves from the patrol car. Upon his return, he instructed Mr. Young to get out and place the syringe on the hood of the car, which he did. In response to a question, Mr. Young stated that he used the syringe to take drugs. (*Id.* at 63-66).

Two fellow officers then removed the passengers from the vehicle and patted them down for weapons. Ms. Houghton voluntarily left her purse in the car when she exited; she was not told to leave it there. She verbally identified herself as "Sandra James" and claimed she had no identification. (*Id.* at 66-69).

Officer Baldwin then began a search of the passenger compartment for drugs, based on the syringe and Mr. Young's statement that he used it to take drugs. The officer found a closed lady's cloth purse on the middle of the back seat and removed a wallet from it. The wallet contained respondent's photo driver's license, identifying her as Sandra K. Houghton. When officer Baldwin asked her why she gave a false name, Ms. Houghton replied it was "in case things went bad." (*Id.* at 68-71).

Officer Baldwin then removed a brown bag from the cloth purse. Opening the bag, the officer found a syringe containing approximately 60 cc's of liquid that proved to be methamphetamine. Looking further, officer Baldwin found more syringes, razor blades and other drug paraphernalia inside the brown bag. The officer then looked at Ms. Houghton's arms, finding fresh needle track marks. At that point, officer Baldwin arrested respondent. (*Id.* at 75-77, 110-12).

Searching further in the purse, the officer found a smaller black bag containing numerous drug-related items, including syringes, spoons and razor blades. (*Id.* at 78). In all, three items inside the purse (two syringes and a vial) were found to contain methamphetamine or methamphetamine residue. (*Id.* at 111-13). During the search, Ms. Houghton admitted the purse was hers but selectively

denied ownership of some of the items pulled from the purse. (Trans. of Hrg. on Motion to Suppress held 9/27/95, p. 6). The only person arrested or charged in this incident was the respondent. (Trial Trans. Vol. I, p. 98).

Ms. Houghton was charged in state district court with possession of methamphetamine in a liquid amount greater than three-tenths of a gram, a felony. Wyo. Stat. § 35-7-1031(c)(iii). Prior to trial, she filed a motion to suppress all evidence seized in the search of the car, claiming, *inter alia*, that the search violated the Fourth and Fourteenth Amendments. A hearing was held on the motion. Subsequently, a decision letter and order were issued denying the motion. The district judge ruled that when an officer has generalized probable cause to believe contraband is somewhere in a car, he may search the car and containers within the car, including a passenger's purse. (Clerk of Court's Pleadings Vol. I, pp. 62, 68, 77, 98; Trans. of Hrg. on Motion to Suppress held 9/27/95). The evidence was duly admitted at trial over the objection of defense counsel. (Trial Trans. Vol. I, p. 72). Ms. Houghton was convicted by the jury as charged. (Clerk of Court's Pleadings Vol. I, pp. 144-45).

Respondent appealed her conviction to the Wyoming Supreme Court,[1] claiming error in the denial of her motion to suppress.[2] She conceded on appeal there was

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[1] There is no intermediate court of appeals in Wyoming for review of cases originating in the state district courts.

[2] Although respondent's claim of error in the trial court and Wyoming Supreme Court relied on both the Fourth Amendment and its state constitutional counterpart, Wyo. Const. art. 1, § 4, she failed to adequately develop her state

probable cause to search the car for drugs but maintained that in the absence of probable cause specific to her or her purse, the search violated her reasonable expectation of privacy in her personal belongings. (App. 6). The Wyoming Supreme Court framed the issue to be "whether the personal belongings of a passenger may be searched under the "automobile exception" when probable cause exists to search the automobile, but there is no probable cause to believe the passenger is involved in criminal activity." (App. 5-6).

The court's analysis began with this Court's pronouncements on the scope of a warrantless search based on probable cause, recognizing that "[t]he scope of a warrantless search based on probable cause is no narrower – and no broader – than the scope of a search authorized by a warrant supported by probable cause." *United States v. Ross*, 456 U.S. 798, 823, 102 S.Ct. 2157, 2172, 72 L.Ed.2d 572 (1982). The court further acknowledged that, according to *Ross*, 456 U.S. at 821, 102 S.Ct. at 2171, "[a] warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search." (App. 7).

While seeming to accept the proposition that the scope of a warrantless search based on probable cause is the same as a search pursuant to a warrant, and that the

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constitutional argument on appeal. *Gronski v. State*, 910 P.2d 561, 566 (Wyo. 1996). Thus, the Wyoming Supreme Court considered the issue solely under Fourth Amendment standards. (App. 6, n. 2).

officer here had probable cause to search the car generally for contraband that was capable of being concealed in Ms. Houghton's purse, the court identified the "problem" to be that there was no specific probable cause to believe the purse contained contraband. At this point, the court declared:

> Therefore, the question is, if a warrant had issued on the basis that *Young* [the driver] held drugs in his car, whether the search of the personal effects of a *passenger or guest* would be within the scope of the warrant. (emphasis in original).

(App. 8).

The court's use of the word "guest" in the passage above to describe Ms. Houghton's status was not accidental, for on this single word the court's analysis shifted from car searches to searches of the person and personal effects of *guests on fixed premises*. After noting the holding in *Ybarra v. Illinois*, 444 U.S. 85, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979) (warrant to search premises of a tavern and the person of the bartender does not permit pat down search of a patron), the court discussed the three tests courts have employed for determining when a premises search warrant authorizes a search of a visitor's personal items. Weighing the relative merits of the three tests,[3] the court adopted the "notice" test for *both* searches of a visitor's

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[3] The three tests are the physical proximity test, the relationship test and the notice test. *See, generally*, 2 Wayne R. LaFave, *Search and Seizure*, § 4.10(b) (3rd ed. 1996).

personal effects under a premises search warrant,[4] and for the search of a motor vehicle passenger's personal effects under the Fourth Amendment's automobile exception. (App. 15, 17).

Under the notice test, an officer may assume that all containers on the premises may be searched unless he knows or should know that a container belongs to someone not covered in the warrant. If he knows or should know the container belongs to a visitor, he may search it only if there is independent probable cause to do so, or if someone on the premises had an opportunity to conceal contraband in the container immediately prior to execution of the search warrant. *See State v. Thomas*, 818 S.W.2d 350, 359 (Tenn.Crim.App. 1991).

Applying the notice test to the facts of this case, the court concluded the search violated the Fourth Amendment:

> Generally, once probable cause is established to search a vehicle, an officer is entitled to search all containers therein which may contain the object of the search. However, if the officer knows or should know that a container is the personal effect of a passenger who is not suspected of criminal activity, then the container is outside the scope of the search unless someone had the opportunity to conceal the contraband within the personal effect to avoid detection. Here, the officers knew or should have known that the purse did not belong to the driver, but

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[4] Petitioner is not challenging herein that part of the Wyoming Supreme Court's holding that applies to the search of a visitor's personal effects under a premises search warrant.

> to one of the passengers. Since there was no probable cause to search the passengers' personal effects and no reason to believe that contraband had been placed within the purse, the search was unreasonable and in violation of the Fourth Amendment right to be free from such governmental intrusion.

(App. 21-22).

Two of the five Justices of the Wyoming Supreme Court dissented from this ruling. The State of Wyoming filed a timely petition for rehearing which was denied by the court on April 28, 1998, with the same two Justices dissenting from the denial of rehearing. (App. 22, 26).

REASONS FOR GRANTING THE WRIT

I

The Wyoming Supreme Court's decision is plainly contrary to this Court's "automobile exception" doctrine as developed in *Carroll*, *Ross* and *Acevedo*.

In holding that probable cause to search a car generally for contraband is insufficient to search the personal belongings of a passenger for whom there is no individualized probable cause, the Wyoming Supreme Court has effectively repudiated this Court's "automobile exception" to the Fourth Amendment's warrant requirement. Henceforth in Wyoming, the law of automobile searches in cases involving one or more passengers (an obviously common situation) will be governed by rules heretofore applicable only to a constitutionally distinct situation – the search of personal belongings of visitors to fixed premises. The court erred by not recognizing the proper

extent of an officer's authority to conduct a warrantless search of an automobile after probable cause has been established.

In *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925), this Court established the automobile exception to the general requirement that a warrant be obtained to conduct a search. Under *Carroll*, it is permissible to conduct a warrantless search of an automobile when there is probable cause to believe the vehicle contains contraband. The exception to the warrant requirement arises here because of the exigency created by the mobility of the vehicle and its likely disappearance. In later decisions, distinctions were made between probable cause to search a vehicle generally and probable cause to search only a particular container inside of a vehicle. In the latter case, where the probable cause extends only to the container and not the entire vehicle, it was initially held that the automobile exception did not apply and a warrant must be obtained to search the container. *United States v. Chadwick*, 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977); *Arkansas v. Sanders*, 442 U.S. 753, 99 S.Ct. 2586, 61 L.Ed.2d 235 (1979).

Currently, the proper extent of searches under the automobile exception is the product of two cases, *United States v. Ross*, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982), and *California v. Acevedo*, 500 U.S. 565, 111 S.Ct. 1982, 114 L.Ed.2d 619 (1991). In *Ross*, the question presented was:

> the extent to which police officers – who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed somewhere within it – may conduct

> a probing search of compartments and containers within the vehicle whose contents are not in plain view.

Ross, 456 U.S. at 800, 102 S.Ct. at 2160. This Court held unequivocally and without qualification that:

> the scope of the warrantless search authorized by that [automobile] exception is no broader and no narrower than a magistrate could legitimately authorize by warrant. If probable cause justifies the search of a lawfully stopped vehicle, *it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.* (emphasis added).

Ross, 456 U.S. at 825, 102 S.Ct. at 2173.

Subsequently, in *California v. Acevedo*, 500 U.S. 565, 111 S.Ct. 1982, 114 L.Ed.2d 619 (1991), the Court revisited *Chadwick/Sanders* by asking whether police may conduct a warrantless search of a bag in the trunk of a car where they had specific probable cause to search the bag but not the rest of the car. In this situation, the *Chadwick/Sanders* rule required that a warrant be obtained before searching the bag because the probable cause was specific to the bag and did not extend generally to the vehicle. Noting the confusion created by the "dual regimes for automobile searches" under *Chadwick/Sanders* and *Ross*, the Court eliminated the warrant requirement for containers where police have probable cause specific to the container but not probable cause to search the vehicle generally:

> We therefore interpret Carroll as providing one rule to govern all automobile searches. The

> police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained.

Acevedo, 500 U.S. at 580, 111 S.Ct. at 1991. While so holding, the Court maintained the narrow principle that probable cause limited to a particular container in a car does not justify a search of the entire vehicle. *Id.*

The Wyoming Supreme Court gave only cursory attention to the fact that this case involves an automobile search. It failed to recognize that an automobile passenger has a lesser expectation of privacy than a visitor to fixed premises, and likewise, the passenger's personal effects enjoy a reduced measure of freedom from governmental intrusion. Under the automobile exception, as long as the personal effects of a passenger are found within the car and may hold the object of the search, *Ross* allows them to be searched by virtue of their presence in the car. *Ross* made no suggestion that once probable cause to search a vehicle is established, only portions of the vehicle or some of the containers therein may be searched. Quite to the contrary, *Ross* established a comprehensive rule to govern all situations.

The court's application of the law regarding searches of fixed premises to a case involving the automobile exception appears unprecedented. As this Court has made clear, the search of an automobile moving down a highway is constitutionally distinguishable from the search of fixed premises. The inherent mobility of automobiles creates exigent circumstances, *Chambers v. Maroney*, 399 U.S. 42, 50-51, 90 S.Ct. 1975, 1980-81, 26 L.Ed.2d 419 (1970), and the pervasive governmental regulation of

vehicles traveling on the highways creates a lesser expectation of privacy in the vehicle's contents. *California v. Carney*, 471 U.S. 386, 392, 105 S.Ct. 2066, 2069-70, 85 L.Ed.2d 406 (1985).

Other courts that have considered this issue have not resorted to legal principles governing fixed premises, but have correctly recognized that *Ross* controls. In *People v. McMillon*, 892 P.2d 879 (Colo. 1995), a case remarkably similar to this one, a police officer lawfully stopped a vehicle for a traffic offense. After determining the driver's identity, the officer arrested him on an outstanding warrant related to drugs. He then directed the passenger, McMillon, to step out of the vehicle. She did so, leaving her closed purse behind on the seat. The officer then observed a syringe in plain view inside the car. This observation, together with the driver's drug history and denial that anyone was diabetic, prompted a search of the car's interior. The officer searched McMillon's purse and found cocaine.

The Colorado Supreme Court ruled that the officer had probable cause to perform a general search of the car for contraband, and that neither *Ross* nor *Acevedo* required a separate probable cause determination for the passenger's purse. The search of the purse was proper irrespective of whether the officer knew or should have known that it belonged to McMillon. As an alternative ground for sustaining the search, the court held that it was a proper search incident to arrest under *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981), even though the purse belonged to a passenger who was not subject to the arrest. The same result was reached by the court in *People v. Moore*, 900 P.2d 66 (Colo. 1995),

where, after a traffic stop during which the officer developed probable cause to search the car generally for drugs, it was held that the officer could properly search a passenger's wallet found under a seat.

Similar applications of *Ross* to the search of a passenger's personal effects, after developing probable cause to search the vehicle generally, can readily be found. *See, e.g., State v. Fix*, 730 P.2d 601, 603-04 (Or.App. 1986) (search of passenger's purse upheld when there was probable cause to believe truck held evidence of an earlier crime, citing *State v. Brown*, 721 P.2d 1357 (Or. 1986), and *State v. Bennett*, 721 P.2d 1375 (Or. 1986)); *United States v. Crotinger*, 928 F.2d 203, 205-06 (6th Cir. 1991) (automobile exception permitted warrantless probable cause search of passenger's suitcases in trunk); *United States v. Critton*, 43 F.3d 1089, 1094-95 (6th Cir.), *cert. denied*, 514 U.S. 1121, 115 S.Ct. 1987, 131 L.Ed.2d 873 (1995) (even if passenger had requisite expectation of privacy in blue bag, probable cause to search vehicle extended to the bag).

Under *Ross*, the scope of the warrantless search at issue here is the same as one that would have been authorized by a warrant. The Wyoming Supreme Court reasoned that the scope of a warrant to search Young's car in this case would not have extended to the purse Ms. Houghton left in the car. This erroneous conclusion was reached only by giving Ms. Houghton the status of a visitor to fixed premises. If a warrant had issued to search Young's car for drugs, it clearly would have extended to any purse found inside it, and no additional probable cause or second warrant would have been needed.

In *United States v. Kralik*, 611 F.2d 343 (10th Cir. 1979), *cert. denied*, 445 U.S. 953, 100 S.Ct. 1603, 63 L.Ed.2d 788 (1980), a warrant was obtained to search a vehicle for weapons, including a sawed off shotgun belonging to Kralik. At the time the car was stopped and seized, it was being operated by another person and Kralik was a passenger. A search of Kralik's suitcase in the trunk revealed the shotgun. Relying on *Ybarra v. Illinois*, *supra*, Kralik contended that the search warrant did not extend to his suitcase and that a second warrant was needed to search it.

The court of appeals disagreed, reasoning that when a search warrant covers the primary container (the car), additional warrants are not required for the smaller containers inside. Considering the search warrant at issue in *Ybarra*, which did not extend to patrons on the premises, the court said, "[w]e do not equate the search of a person unnamed in a warrant with the search of a described automobile for a specified item." 611 F.2d at 345. *Accord*, *United States v. DeSimone*, 660 F.2d 532, 542 (5th Cir. 1981), *cert. denied*, 455 U.S. 1027, 102 S.Ct. 1732, 72 L.Ed.2d 149 (1982) (valid warrant to search one person's car permitted search of another person's suitcase found therein without need for an additional warrant); *United States v. Grandstaff*, 813 F.2d 1353, 1358-59 (9th Cir.), *cert. denied*, 484 U.S. 837, 108 S.Ct. 119, 98 L.Ed.2d 78 (1987) (warrant to search vehicle authorizes search of any luggage therein that might contain contraband listed in warrant); *United States v. Calarco*, 668 F.2d 920, 921 (6th Cir. 1982) (warrant to search car authorized search of objects found within car); *United States v. Callison*, 577 F.2d 53, 55 (8th Cir.), *cert. denied*, 439 U.S. 873, 99 S.Ct. 209, 58 L.Ed.2d 187 (1978)

(warrant to search car authorized search of suitcase found therein without need for a second warrant).

It is apparent that the Wyoming Supreme Court erred in its understanding of the Fourth Amendment's automobile exception. Given the existence of probable cause to search the vehicle generally, an *additional* measure of probable cause should not be required to search a particular container that could hold the object of the search. The Fourth Amendment does not require such calculations, and the rule of *Ross* and *Acevedo* contains no such qualifications. As this Court has made clear, probable cause to search a vehicle extends to "every part of the vehicle and its contents that may conceal the object of the search." *Ross*, 456 U.S. at 825, 102 S.Ct. at 2173.

II

If this search had been conducted incident to arrest, not requiring probable cause to search, it would have been lawful. It is peculiar to hold the search unlawful when, as here, it is based on probable cause.

A curious anomaly arises in this case from the fact that the search was based on probable cause and was not performed incident to the arrest of the driver, David Young. If he had been lawfully arrested prior to initiation of the search involved here, the Wyoming Supreme Court would have been constrained to uphold the search of Ms. Houghton's purse as incident to Young's arrest. No probable cause would have been required to search the passenger compartment or the purse. And yet, because this search was based on probable cause to search the car generally, it is struck down.

In *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981), this Court held that when an officer makes a lawful custodial arrest of a motor vehicle occupant, he may, contemporaneously with the arrest, search the passenger compartment of the vehicle, including *any* containers found therein. Such a search is not based on the existence of probable cause to search, rather, it is the custodial arrest based on probable cause that justifies the intrusion. 453 U.S. at 460-61, 101 S.Ct. at 2864.

This straightforward rule has been applied numerous times to allow the search of a nonarrested passenger's personal effects found inside a vehicle. *See, e.g., State v. Moore*, 619 So.2d 376, 377 (Fla.Dist.Ct.App. 1993) (arrest of driver permitted search incident to arrest of passenger's closed purse on floorboard); *State v. Loftis*, 568 So.2d 121, 122 (Fla.Dist.Ct.App. 1990) (arrest of driver permitted search incident to arrest of passenger's open purse on floorboard); *People v. Mitchell*, 42 Cal.Rptr.2d 537, 539-40 (Cal.Dist.Ct.App. 1995), *cert. denied*, 517 U.S. 1192, 116 S.Ct. 1683, 134 L.Ed.2d 785 (1996) (driver's arrest permitted search incident to arrest of passenger's purse on floorboard, citing *People v. Prance*, 277 Cal.Rptr. 567 (Cal.Dist.Ct.App. 1991)); *State v. Parker*, 944 P.2d 1081, 1084-85 (Wash.Ct.App. 1997), *review granted*, 134 Wash.2d 1024, ___ P.2d ___ (Wash. May 6, 1998) (No. 66147-2) (driver's arrest permitted search incident to arrest of passenger's purse voluntarily left on seat, distinguishing *State v. Seitz*, 941 P.2d 5 (Wash.Ct.App. 1997) (driver's arrest does not justify search of passenger's purse where purse is not in car at time of search but is on passenger's person outside of car)); *People v. Bullock*, 485 N.W.2d 866, 869-70 (Mich. 1992) (arrest of *passenger* permitted search

incident to arrest of *driver's* purse left in car); *State v. Treutelaar*, No. 96-3249-CR, 1997 WL 213040 (Wis.Ct.App. May 1, 1997) (arrest of driver permitted search incident to arrest of passenger's manila envelope left on floorboard).

In cases involving lawfully stopped motor vehicles, searches of containers incident to arrest are perfectly valid although probable cause to search is absent. The same search, when based on probable cause, should not be assigned a constitutionally inferior status.

III

The Wyoming Supreme Court's holding is unworkable, illogical and will cause confusion in law enforcement and the lower courts.

At least since the days of *Carroll*, this Court has recognized the difference between searches of lawfully stopped vehicles and searches of fixed premises in terms of the constitutional protection afforded each.[5] Premises have always enjoyed more Fourth Amendment protection from warrantless searches than moving vehicles. *See, e.g., Agnello v. United States*, 269 U.S. 20, 33, 46 S.Ct. 4, 6, 70 L.Ed. 145 (1925) ("Belief, however well founded, that an article sought is concealed in a dwelling house, furnishes

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[5] In *Ross*, 456 U.S. at 805-07, 102 S.Ct. at 2162-64, repeating what had been said in *Carroll*, the Court traced the history of Congressionally sanctioned warrantless searches of vessels, wagons and carriages for contraband, noting that since the time of the first Congress and adoption of the Fourth Amendment, such searches have been regarded as reasonable when based on probable cause.

no justification for a search of that place without a warrant. And such searches are held unlawful notwithstanding facts unquestionably showing probable cause.") It is not the case that a passenger lacks an expectation of privacy in his personal effects while traveling on a highway. Rather, it is the lawful stop of the vehicle and the existence of probable cause to search it that justifies the infringement of the passenger's privacy interest. Once probable cause is established to search the car generally, it is difficult to understand how some containers can be "more private" than others, to the point of defeating the probable cause.

Logically, treating the personal belongings of passengers in a car the same as those of visitors or guests to fixed premises does not make sense and, as a practical matter, it is unworkable. One simply does not "visit" mobile vehicles traveling on the streets and highways. People inside a moving vehicle obviously have the common purpose of getting from one place to another together by using the public thoroughfares. Guests on premises, however, may have any of a myriad of reasons for being on the premises, and they may come and go, be there or not be there, as they choose.

As this case illustrates, rules developed for visitors to fixed premises do not translate well into the automobile context. Ms. Houghton was not "visiting" the car she jointly occupied with David Young. Whatever else their reasons may have been that night for being together, their joint presence in the car demonstrated a common purpose of using the car to get from one place to another over the public roads. If Ms. Houghton had fortuitously been driving the car at the moment it was stopped instead of

Young, who would have been the "guest/passenger" and who would have been the "resident" of the premises? Is the driver always in possession of the car to the exclusion of the passengers? If the registered owner is always the "resident" of the vehicle, what if he is not present in the car when it is stopped? Is everyone in the car a mere visitor then? What if Young was alone in the car but Ms. Houghton's purse was there? Could police have searched it then? What if the syringe in this case had been seen in Ms. Houghton's shirt pocket and not Young's? Would that have created probable cause to search the car or only Ms. Houghton and her belongings? Can probable cause to search the car be developed only through the driver?

The rule announced by the court will require officers to make difficult judgments concerning which containers may be searched. The occupants of a vehicle apparently must be divided into two groups – suspects and non-suspects. Personal effects must then be allocated among the occupants to determine which ones may be searched. Police will have to develop facts through questioning the occupants, a process not likely to produce truthful information, or perhaps, any information at all. Police will have to proceed at their peril.[6]

Unfortunately, this rule will produce the very sort of mischief this Court has strenuously sought to prevent in the area of search and seizure. Quoting in part from LaFave, *"Case-By-Case Adjudication" Versus "Standardized*

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[6] It is not merely the rights of suspects that are involved. Police exposure to civil liability for guessing wrong about the extent of a person's constitutional rights is a matter worthy of this Court's consideration.

Procedures": The Robinson Dilemma, 1974 S. Ct. Rev. 127, this Court warned in *Belton*, 453 U.S. at 458, 101 S.Ct. at 2863:

> "Fourth Amendment doctrine, given force and effect by the exclusionary rule, is primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged. A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be 'literally impossible of application by the officer in the field.' " *Id.*, at 141.

In short, "[a] single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." *Dunaway v. New York*, 442 U.S. 200, 213-214.

The holding of the Wyoming Supreme Court revives the confusion that marked the state of the automobile exception prior to *Ross* and *Acevedo*. To eliminate this confusion, this Court should address the problem presented and correct it.

CONCLUSION

The Wyoming Supreme Court has produced a rule that violates the plain language of this Court's pronouncements concerning the automobile exception. Based exclusively on the Fourth Amendment, this rule represents a regression to the former disarray in the law that was so troublesome to courts and law enforcement.

Given how the holding at issue conflicts with prior decisions of this Court, the straightforward nature of the facts and the brevity of the state court record, petitioner respectfully requests the Court to grant the writ of certiorari and further suggests a summary disposition on the merits.

Respectfully submitted,

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APPENDIX

Sandra HOUGHTON, Appellant (Defendant),

v.

The STATE of Wyoming, Appellee (Plaintiff).

No. 96-99.

Supreme Court of Wyoming.

April 3, 1998.

Rehearing Denied April 28, 1998.*

Sylvia L. Hackl, State Public Defender; Donna Domonkos, Appellate Counsel; Michael Dinnerstein, Director, Wyoming Defender Aid Program; T. Alan Elrod and Scott J. Olheiser, Student Interns, for Appellant (Defendant).

William U. Hill, Attorney General; Paul S. Rehurek, Deputy Attorney General; D. Michael Pauling, Senior Assistant Attorney General; Georgia L. Tibbetts, Senior Assistant Attorney General; Theodore E. Lauer, Director, Prosecution Assistance Program; and Sandra Boudreaux, Student Intern, for Appellee (Plaintiff).

Before TAYLOR, C.J., and THOMAS, MACY, GOLDEN and LEHMAN, JJ.

TAYLOR, Chief Justice.

Appellant's arrest and conviction on one count of felony possession of a controlled substance was based

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* Thomas and Golden, JJ., would have granted Rehearing.

upon evidence found in her purse during a warrantless search of an automobile in which she was a passenger. On appeal, appellant raises several challenges to her conviction, including the district court's denial of her motion to suppress the evidence found in her purse. We hold that the search of appellant's purse exceeded the reasonable scope of the search of the car, violating her Fourth Amendment rights.

Reversed and remanded.

I. ISSUES

Although appellant, Sandra Houghton (Houghton), identifies four issues on appeal, the dispositive issue is:

> Did the trial court err in denying the Appellant's Motion to Suppress Physical Evidence?

The State of Wyoming, as appellee, phrases the issue as follows:

> Did the district court err in denying appellant's pretrial motion to suppress the methamphetamine seized by law enforcement officers during a warrantless search of David Young's automobile?

II. FACTS

In the early morning hours of July 23, 1995, a Wyoming Highway Patrol Officer stopped an automobile for speeding and a faulty brake light. There were three occupants in the car – the driver, David Young (Young); his girlfriend; and Houghton. Shortly after the stop, the officer was joined by two other law enforcement officers.

While the officer was questioning Young, he noticed a syringe in Young's shirt pocket. The officer told Young he was going to get gloves out of the patrol car and would return to question Young about the syringe. While the officer went to his car, another officer kept an eye on the occupants.

Upon his return, the officer ordered Young to step out of the car and to place the syringe on the hood. When the officer asked what the syringe was for, Young responded that he used the syringe to take drugs.

At that point, the passengers were ordered out of the vehicle and were asked for identification. Houghton, identifying herself as Sandra Jones, stated she did not have identification. All occupants were then "[patted] * * * down, to see if there were any weapons or anything."[1] After the pat down yielded no weapons or contraband, the officer searched the car for drugs.

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[1] Since the pat down search of Young and the passengers failed to reveal any weapons or contraband, the propriety of the search was not addressed on appeal. However, we are concerned that the officers apparently believed that they were able to search the passengers of the vehicle absent probable cause to believe the passengers were engaged in illegal activity or any indication that the passengers posed a danger to the police officers. Here, there was no testimony which established that the driver or the occupants may be armed, and no weapons observed within the vehicle. Indeed, it appears that all the occupants of the car were cooperative throughout the stop. Thus, we perceive no reasonable basis for the pat down search of the passengers under *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) and its progeny, or *Perry v. State*, 927 P.2d 1158 (Wyo.1996).

While searching behind the area where the two female passengers had been seated, the officer found a closed "cloth lady's purse." He opened the purse and removed a wallet. Searching the wallet, the officer found Houghton's driver's license. The officer then told Houghton to approach the driver's side of the vehicle, where she stated that the purse was hers. Without further comment, the officer continued his search, removing a brown "wallet bag" containing drug paraphernalia, a syringe containing an estimated 60 cc's of liquid, a black wallet containing drug paraphernalia, a vial, and a syringe with approximately 10 cc's of liquid. After a field test of a small amount of the liquid from the syringe in the brown bag tested positive for methamphetamine, the officer took custody of the two containers, returned the purse to the car, and arrested Houghton for possession of a controlled substance. Young and his girlfriend were released.

Prior to trial, Houghton moved to suppress the evidence found in her purse, asserting there was no probable cause to search her belongings. Following a hearing, the district judge issued a decision letter which denied Houghton's motion to suppress the contents of her purse. Relying on *California v. Acevedo*, 500 U.S. 565, 580, 111 S.Ct. 1982, 1991, 114 L.Ed.2d 619 (1991), the district judge found that the officer had probable cause to search the car for contraband and, therefore, any containers within the car which could hold the contraband were subject to search.

A jury found Houghton guilty of one count of felony possession of a controlled substance. After Houghton unsuccessfully moved for acquittal or a new trial, she was

sentenced to not less than two nor more than three years at the Wyoming Women's Center. This timely appeal followed.

III. STANDARD OF REVIEW

On a motion to suppress evidence, the moving party must establish by a preponderance of the evidence that her rights were violated. *Guerra v. State*, 897 P.2d 447, 452 (Wyo.1995) (*quoting Malcolm v. United States*, 332 A.2d 917, 918 (D.C.App.1975)). The constitutional touchstone of a search and/or seizure is whether the search unreasonably violated a justifiable expectation of privacy. *Saldana v. State*, 846 P.2d 604, 610-11 (Wyo.1993). "Whether a search is reasonable is to be determined from the facts and circumstances of the case in light of the 'fundamental criteria' that are found in the Fourth Amendment * * * ." *Id.* at 611. We defer to the district court's findings of fact regarding the circumstances attending the search and seizure and review those findings "pursuant to an abuse of discretion – clearly erroneous standard * * * ." *Hall v. State*, 911 P.2d 1364, 1367 (Wyo.1996). However, whether a search and seizure is unreasonable, thereby violating constitutional protections, is ultimately a question of law which warrants *de novo* review. *Id.*

IV. DISCUSSION

The issue before us is whether the personal belongings of a passenger may be searched under the "automobile exception" when probable cause exists to search the automobile, but there is no probable cause to believe

the passenger is involved in criminal activity. Houghton does not contest the probable cause to conduct the search of Young's car for drugs, but asserts that in the absence of probable cause to believe she possessed contraband, the search of her purse violated her justifiable expectation of privacy in her personal belongings. The State counters that the officers had no duty to determine probable cause as to each container within the car, and consequently, the permissible scope of the search included the search of all containers, including a passenger's purse.

The Fourth Amendment of the United States Constitution provides citizens "[t]he right * * * to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures * * * ."[2]. General seizures are prohibited; all searches must be supported by probable cause to believe evidence of a crime will be found.

> "The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant."

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[2] Wyo. Const. art. 1, § 4 is "somewhat stronger than its federal counterpart, in that under our Wyoming Constitution it is mandatory that the search warrant be issued upon an affidavit." *Hall*, 911 P.2d at 1368. Although Houghton's claims rely on both federal and state constitutional mandate, she does not distinguish the protection afforded by the Wyoming Constitution from that of its federal counterpart. *See Gronski v. State*, 910 P.2d 561, 566 (Wyo.1996).

Hall, 911 P.2d at 1369 (*quoting Marron v. United States*, 275 U.S. 192, 196, 48 S.Ct. 74, 76, 72 L.Ed. 231 (1927)).

The scope of a search is defined by the probable cause upon which that search is predicated, *not* whether the search is conducted pursuant to a warrant or pursuant to a recognized exception to the warrant requirement. The Supreme Court of the United States has unequivocally held that "[t]he scope of a warrantless search based on probable cause is no narrower – and no broader – than the scope of a search authorized by a warrant supported by probable cause." *United States v. Ross*, 456 U.S. 798, 823, 102 S.Ct. 2157, 2172, 72 L.Ed.2d 572 (1982) (*quoted in Hunter v. State*, 704 P.2d 713, 717 (Wyo.1985), detailing the line of cases leading to the holding in *Ross*). Neither is the permissible scope of the search dependent on the place being searched, but on the object of the search.

> A warrant to search a vehicle would support a search of every part of the vehicle *that might contain the object of the search.* When a legitimate search is under way, and *when its purpose and its limits have been precisely defined,* nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.

Ross, 456 U.S. at 821, 102 S.Ct. at 2171 (emphasis added). *See also Acevedo*, 500 U.S. at 580, 111 S.Ct. at 1991.

Thus, as *Ross* and *Acevedo* make clear, the permissible scope of the warrantless search of Young's car under the

automobile exception is identical to a search conducted pursuant to a warrant. The problem in this case is that while Houghton's purse could physically contain the object of the search, there was no probable cause to believe that contraband would be found in her personal belongings. Therefore, the question is, if a warrant had issued on the basis that *Young* held drugs in his car, whether the search of the personal effects of a *passenger or guest* would be within the scope of the warrant.

The United States Supreme Court has not addressed the permissibility of searching a guest's or passenger's belongings, but has considered the search of a guest's person. *Ybarra v. Illinois*, 444 U.S. 85, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979). In *Ybarra*, a search was conducted pursuant to a warrant to search the premises of the Aurora Tap Tavern and the person of the bartender, "Greg," based on probable cause that Greg was dealing drugs while at work. During the search, the officers conducted a pat down search of a customer in the bar, resulting in the discovery that the patron carried a quantity of drugs. The United States Supreme Court held that the pat down search was an unconstitutional violation of the patron's reasonable expectation of privacy, stating: "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." *Ybarra*, 444 U.S. at 91, 100 S.Ct. at 342.

> Where the standard is probable cause, *a search or seizure of a person must be supported by probable cause particularized with respect to that person.* This requirement cannot be undercut or avoided

> by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be. The Fourth and Fourteenth Amendments protect the "legitimate expectations of privacy" of persons, not places. * * * Each patron who walked into the Aurora Tap Tavern on March 1, 1976, was clothed with constitutional protection against an unreasonable search or an unreasonable seizure. That individualized protection was separate and distinct from the Fourth and Fourteenth Amendment protection possessed by the proprietor of the tavern or by "Greg." Although the search warrant, issued upon probable cause, gave the officers authority to search the premises and to search "Greg," it gave them no authority whatever to invade the constitutional protections possessed individually by the tavern's customers.

Ybarra, 444 U.S. at 91-92, 100 S.Ct. at 342. *See also United States v. Di Re*, 332 U.S. 581, 587, 68 S.Ct. 222, 225, 92 L.Ed. 210 (1948) ("We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled.").

Although the United States Supreme Court's direct concern in *Ybarra* was the impermissible intrusion on the person rather than the belongings of the patron, courts have recognized that "special concerns" are raised "when the items searched belong to * * * visitors to the premises described in the warrant." *State v. Andrews*, 201 Wis.2d 383, 549 N.W.2d 210, 212 (1996). "Such searches may become personal searches outside the scope of the premises search warrant requiring independent probable

cause" for searching the personal item at issue. *United States v. Giwa*, 831 F.2d 538, 544 (5th Cir.1987).

Jurisdictions considering the problem have reached different conclusions as to when separate probable cause is necessary to search the belongings of a visitor to the premises. Generally, three tests have evolved when analyzing this issue: the "physical proximity" or "physical possession" test; the "relationship" test; and the prodigy of the relationship test, the "notice" test. *See, generally*, 2 Wayne R. LaFave, *Search and Seizure*, § 4.10(b) (3rd ed.1996).

A substantial minority of courts have adopted the "physical proximity" test, which allows the search of objects, but prohibits the search of a person. The physical nexus between the person and the object searched determines whether the item will be considered an extension of the "person." *United States v. Teller*, 397 F.2d 494, 497 (7th Cir.), *cert. denied*, 393 U.S. 937, 89 S.Ct. 299, 21 L.Ed.2d 273 (1968) (search of woman's purse upheld when purse placed on the bed during search).[3] If the

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[3] *See also United States v. Branch*, 545 F.2d 177, 182 (D.C.Cir.1976) (search not permitted where bag being carried on shoulder of person who walked into residence while search being executed, combination of factors must be considered); *United States v. Johnson*, 475 F.2d 977, 979 (D.C.Cir.1973) (upholding search of purse placed on table in front of visitor); *People v. Coleman*, 436 Mich. 124, 461 N.W.2d 615, 619 (1990) (adopts "physical proximity" test but facts sufficient to support reasonable belief that defendant not mere visitor and existence of separate probable cause to search the purse); *State v. Wills*, 524 N.W.2d 507, 511-12 (Minn.App.1994) (upholding search of safe under both "physical proximity" and "notice" tests); *Com.*

object is close enough to be considered an extension of its owner, the search is outside the scope of the search of another's premises.

Andrews is illustrative of contemporary application of the "physical proximity" test. The Wisconsin court held that police executing a search warrant for private premises may search all items that are "plausible repositories" for objects of the search *except* those worn by or in physical possession of persons whose search is not authorized by warrant. *Andrews*, 549 N.W.2d at 218. Noting that none of the tests courts have used to determine whether a visitor's belongings are within the scope of a search have been without criticism, the Wisconsin court found that the "physical proximity" test comports with *Ybarra* by distinguishing the search of a person from a less intrusive search of belongings. The Wisconsin court also found the "physical proximity" test to be less susceptible to abuse, more easily applied, and more likely to render consistent results regarding admissibility of the evidence at trial. *Andrews*, 549 N.W.2d at 217.

While our analysis is similar to that of the Wisconsin court, we are not persuaded that the "physical proximity" approach affords sufficient recognition of reasonable expectations of privacy in the absence of individualized probable cause. Neither are we convinced that "physical proximity" provides the most efficacious balance between legitimate individual and state interests.

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v. Reese, 520 Pa. 29, 549 A.2d 909, 912 (1988); and *State v. Jackson*, 873 P.2d 1166, 1168 (Utah App.1994).

A majority of courts have rejected the "physical proximity" test, generally on the rationale that "the protective boundary established by requiring a search warrant should encompass those extensions of a person which he reasonably seeks to preserve as private, regardless of where he may be." *United States v. Micheli*, 487 F.2d 429, 432 (1st Cir.1973). In *Micheli*, the court further opined:

> A focus on actual physical possession is too narrow, however, in that it would leave vulnerable many personal effects, such as wallets, purses, cases, or overcoats, which are often set down upon chairs or counters, hung on racks, or checked for convenient storage. The Fourth Amendment's basic interest in protecting privacy * * * and avoiding unreasonable governmental intrusions * * * is hardly furthered by making its applicability hinge upon whether the individual happens to be holding or wearing his personal belongings after he chances into a place where a search is underway. The rudest of governmental intrusions into someone's private domain may occur by way of a search of a personal belonging which had been entrusted to a nearby hook or shelf. The practical result of such a rule may be to encourage the government to obtain search warrants for places frequented by suspicious individuals, such as infamous bars, then lie in wait for those individuals to enter and make themselves comfortable.

Id. at 431.

Based on this reasoning, courts have rejected the "physical proximity" test in favor of either a "relationship" test, a "notice" test, or a combination of the two. The "relationship" test looks to the nexus between the

person, the effects searched, and the premises. Under this approach, if the items belong to someone who is more than a "visitor" or the effects have a special relationship to the place, then they are part of the premises which may be searched. If not, the personal effects are outside the scope of a premises warrant. *United States v. Young*, 909 F.2d 442, 445 (11th Cir.1990), *cert. denied*, 502 U.S. 825, 112 S.Ct. 90, 116 L.Ed.2d 62 (1991); *Giwa*, 831 F.2d at 545; *Micheli*, 487 F.2d at 430-31.

The "relationship" approach has not been without its critics. *See State v. Jackson*, 873 P.2d 1166, 1168 (Utah App.1994) and *Andrews*, 549 N.W.2d at 217. In *State v. Nabarro*, 55 Haw. 583, 525 P.2d 573, 577 (1974), the shortcomings of the "relationship" approach were identified as follows:

> [P]olice cannot realistically be expected to avoid searching the property of a mere visitor to the premises unless they are aware of its ownership. Absent a requirement of such awareness, the effective execution of a warrant to search a place would be impossible since the police could never be sure that a plausible repository for items named in the warrant belongs to a resident, and hence is searchable, or to a non-resident, and hence is not searchable. Because of this, without notice of some sort of the ownership of a belonging, the police are entitled to assume that all objects within premises lawfully subject to search under a warrant are part of those premises for the purpose of executing the warrant.

We agree that the "relationship" test used by several courts provides an unworkable and impractical analysis

given the time constraints attendant upon most searches. Even the most particular description of "the place to be searched" will not avoid the uncertainty of the ownership of "plausible repositories" in some circumstances. The holding in *United States v. Gottschalk*, 915 F.2d 1459, 1461 (10th Cir.1990) echoes the difficulties inherent in the real-life application of the "relationship" test:

> [Defendant] urges that we should adopt a strict limitation on the scope of a "premises" search warrant to exclude any vehicles other than those actually owned or controlled by the owner of the premises. The difficulty with such a limitation, as formulated, is demonstrated by this case. The circumstances surrounding the search of the Cadillac were such that at the time the officers decided to proceed it would have been difficult to determine with precision whether the car was in fact controlled by [the person identified in the warrant] or whether [defendant] retained full control and dominion. * * * A legal limitation based on such a difficult and uncertain factual determination is neither practical nor desirable where it must be applied in cases such as this, late at night, in the course of considerable surrounding police activity, without the benefit of full factual inquiry, and by non-legally trained personnel.

The Tenth Circuit Court of Appeals' solution applied a "notice" approach:

> We believe the better rule in these circumstances is to define the scope of the warrant to include those automobiles either actually owned or under the control and dominion of the premises owner, or, alternatively, *those vehicles which*

> *appear, based on objectively reasonable indicia present at the time of the search, to be so controlled. Thus where the officers act reasonably in assuming that the automobile is under the control of the premises owner, it is included in the warrant.*

Id. at 1461 (emphasis added). That analysis supported our decision in *Guerra*, 897 P.2d at 459, upholding the admission of evidence seized from two vehicles adjacent to the premises of the defendant.

We extend that reasoning here and adopt the "notice" test in circumstances where we must determine the reasonableness of the search of a visitor's personal effects while executing a premises search. In Wyoming, " 'the permissibility of a particular law enforcement practice is judged by balancing its intrusion on . . . Fourth Amendment interests against its promotion of legitimate government interests.' " *Jones v. State*, 902 P.2d 686, 692 (Wyo.1995) (*quoting Texas v. Brown*, 460 U.S. 730, 737-39, 103 S.Ct. 1535, 1541-42, 75 L.Ed.2d 502 (1983)). *See also Collins v. State*, 854 P.2d 688, 692 (Wyo.1993) and *Saldana*, 846 P.2d at 610-11 (holding that reasonableness of seizure of a person is determined by balancing the nature of the intrusion against the governmental interest). After reviewing the approaches used by other courts, we are persuaded that the "notice" test affords the best balance between the legitimate interests of both the individual and law enforcement.

Under the "notice" test, police officers may assume that all containers on the premises may be searched unless they know or should know that the containers belong to someone not contemplated in the warrant or amenable to search on the basis of probable cause. The

practical parameters applied under a "notice" approach are that police may search the visitor's belongings on the premises under a proper assumption that all personal property belongs to the resident if:

> 1. The visitor's personal items might serve as a plausible repository of the object of the search, unless the officer knows the property belongs to another; and
>
> 2. If the officer knows the property belongs to the visitor, they may not rely on the authority conferred by the warrant unless;
>
> 3. Someone within the premises had the opportunity to conceal the contraband within the personal effects of the visitor immediately prior to the execution of the warrant.

State v. Thomas, 818 S.W.2d 350, 359 (Tenn.Crim.App.1991) (search of visitor's purse beyond scope of warrant to search premises of male suspect because not reasonable to believe suspect owned woman's pocketbook).[4] The "notice" test provides law enforcement officers clear

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[4] *See also Waters v. State*, 924 P.2d 437, 440 (Alaska App.1996) (absent a clear notice that the purse belonged to female visitor rather than female identified in warrant, search upheld); *People v. McCabe*, 144 Cal.App.3d 827, 192 Cal.Rptr. 635, 636-37 (1983); *Wright v. State*, 221 Ga.App. 559, 472 S.E.2d 128, 129 (1996) (jacket could have belonged to anyone in home, search upheld, distinguishing *Childers v. State*, 158 Ga.App. 613, 281 S.E.2d 349 (1981) where officers should have known that purse belonged to visitor because she was only female on premises); *Nabarro*, 525 P.2d at 576-78; and *State v. Lambert*, 238 Kan. 444, 710 P.2d 693, 697-98 (1985).

guidelines, and can be quickly implemented in an emergency situation, but does not unnecessarily abrogate individualized Fourth Amendment protection merely because a jacket is removed or a purse is placed on a floor or table. Moreover, the "notice" approach most closely adheres to our analysis in previous cases. *See Gronski v. State*, 910 P.2d 561, 564 (Wyo.1996) (warrantless search of duffel bag in trunk of car held proper because probable cause existed to believe the duffel bag contained marijuana) and *Hunter*, 704 P.2d at 717 (warrantless search defined by the object and the places in which there is probable cause to believe it may be found).[5]

Applying the "notice" test to the facts as related by the arresting officer, we find that there was no probable cause to search Houghton's purse. The officer testified that there were two women passengers and a male driver in the car when it was stopped. The officer searched the car based on his belief that the syringe indicated that *the male driver* may have contraband in his car. At the time of the search, the officer had no knowledge which indicated Houghton also possessed drugs. The purse was found behind the area where Houghton was seated until ordered out of the vehicle. The officer further acknowledged that it was a "lady's purse" and that "men do not carry purses * * * ."

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[5] The "automatic companion rule" adopted in our recent holding in *Perry*, 927 P.2d 1158 is premised solely on the "justifiable concern for officer safety in the context of a lawful arrest of Perry, Jr. * * * ." *Id.* at 1163. It is, therefore, not applicable in Houghton's case as there was no arrest prior to the search and no reasonable belief that the purse concealed any weapon which would endanger the officers.

At that point, the officer knew, or should have known, that the purse was not the possession or in the control of the driver, but was the personal effect of one of the non-suspect passengers. Thus, under the "notice" test, the purse was not within the scope of the search of the automobile unless the officer had some reason to believe that "someone within the premises has had the opportunity to conceal the contraband within the personal effects of the visitor immediately prior to the execution of the * * * [search]." *Thomas*, 818 S.W.2d at 359.

Since part of Houghton's defense was that one of the "wallets" was not hers, the State went to great lengths to show there was no opportunity for the occupants of the car to place contraband in Houghton's purse immediately prior to or during the stop. The officer testified that he used his lights to illuminate the inside of the car at all times, and that there were no "unusual movements or sudden movements within the vehicle itself." He also testified that the occupants were constantly under his observation or that of another officer. The officer's testimony clearly established that there was no reason to believe the object of the search was placed in the purse prior to the stop, no probable cause to believe that either woman was carrying drugs, and no reason to believe that the purse belonged to Young. Consequently, the closed purse was not within the scope of the warrantless search for the contraband in the possession or control of the driver. Since the search of the purse was not based on probable cause or within the scope of the search of Young's car, the district court erred in denying

Houghton's motion to suppress the evidence found therein.[6]

The State does not rely on any of the tests described above, but urges that we follow the recent Colorado Supreme Court ruling in *People v. McMillon*, 892 P.2d 879 (Colo.1995). There, the female driver and McMillon, the female passenger, were asked to step outside a vehicle which had been stopped for equipment violations. While questioning the driver, the deputy observed a syringe "between the driver's seat and the console between the seats." *Id.* at 880. The deputy then arrested the driver and proceeded to conduct an "inventory search incident to the driver's arrest." *Id.* During the search of the vehicle, the deputy opened McMillon's purse which she had left on the passenger's seat and discovered controlled substances within. *Id.* at 880-81.

In support of its conclusion that the ownership of the purse was irrelevant under the automobile exception, the Colorado Supreme Court offered this cursory analysis:

> We further conclude that neither *Acevedo* [500 U.S. 565, 111 S.Ct. 1982, 114 L.Ed.2d 619] nor *Ross* [456 U.S. 798, 102 S.Ct. 2157] requires a separate determination of probable cause for each closed container found within a vehicle.

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[6] It is uncontested that there was no consent to search the purse, and no arrest other than that based on the contraband found within the purse. Neither was there reason to believe that the purse contained any weapon. Therefore, no alternative basis on which to uphold the search of Houghton's purse need be discussed.

> Accordingly, because Deputy Hicks had probable cause to search the vehicle under the automobile exception, he also had probable cause to lawfully search McMillon's purse located within the passenger compartment of the automobile, irrespective of whether Deputy Hicks knew or should have known that the purse belonged to McMillon.

McMillon, 892 P.2d at 883. Although the facts of *McMillon* may be distinguished from those before us by the gender and arrest of the suspect, the Colorado Supreme Court's analysis does not so much as nod to the articulation of the individual nature of Fourth Amendment guarantees found in *Ybarra*, 444 U.S. 85, 100 S.Ct. 338. Neither does the analysis attempt to rationalize the governmental intrusion against a reasonable expectation that one's closed purse or wallet will not be searched in the absence of probable cause that it may contain evidence of a crime.[7] Indeed, *McMillon*'s holding ostensibly allows officers to order non-suspect passengers to leave their

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[7] Neither *Love v. State*, 254 Ga. 697, 334 S.E.2d 173 (1985) nor *State v. Vermuele*, 241 Neb. 923, 492 N.W.2d 24 (1992) contain facts similar to the case before us. In *Love*, 334 S.E.2d at 174, the court held that the warrantless search of defendant's companion's purse was authorized. Defendant was convicted of possession of drugs, largely on evidence furnished by his female companion who had physical possession of the contraband at the time of arrest and who had given consent to search her boyfriend's car where her purse was located. *Id.* In *Vermuele*, 492 N.W.2d at 30-32, the court held that the warrantless search of a passenger's wallet was valid because probable cause existed to search the vehicle for contraband. However, in that case, the passenger was searched and drugs were found on his person, leading to his arrest prior to the search of the wallet. *Id.* at 29.

belongings in a car while they must exit, so that the car and its contents may be searched.

"The word 'automobile' is not a talisman in whose presence the Fourth Amendment * * * disappears." *Coolidge v. New Hampshire*, 403 U.S. 443, 461, 91 S.Ct. 2022, 2035, 29 L.Ed.2d 564 (1971). "The purpose of the Fourth Amendment's requirement of reasonableness 'is to preserve that degree of respect for the privacy of persons and the inviolability of their property that existed when the provision was adopted – even if a later, less virtuous age should become accustomed to considering all sorts of intrusion "reasonable." ' " *Richards v. Wisconsin*, 520 U.S. 385, ___ n. 4, 117 S.Ct. 1416, 1421 n. 4, 137 L.Ed.2d 615 (1997) (*quoting Minnesota v. Dickerson*, 508 U.S. 366, 380, 113 S.Ct. 2130, 2139, 124 L.Ed.2d 334 (1993), Scalia, J., concurring). We cannot agree that the automobile exception removes from judicial review *all* searches of *all* containers physically capable of containing the object of the search. To so rule would provide a wholesale surrender of Fourth Amendment protection upon entering an automobile.

V. CONCLUSION

Generally, once probable cause is established to search a vehicle, an officer is entitled to search all containers therein which may contain the object of the search. However, if the officer knows or should know that a container is the personal effect of a passenger who is not suspected of criminal activity, then the container is outside the scope of the search unless someone had the

opportunity to conceal the contraband within the personal effect to avoid detection. Here, the officers knew or should have known that the purse did not belong to the driver, but to one of the passengers. Since there was no probable cause to search the passengers' personal effects and no reason to believe that contraband had been placed within the purse, the search was unreasonable and in violation of the Fourth Amendment right to be free from such governmental intrusion. We, therefore, reverse the district court's denial of Houghton's motion to suppress and remand this case for disposition in accord with this opinion.

GOLDEN, Justice, dissenting, with whom THOMAS, Justice, joins.

I respectfully dissent. A number of points are now settled in Fourth Amendment jurisprudence:

1. The touchstone of the United States Supreme Court's Fourth Amendment analysis is always "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09, 98 S.Ct. 330, 332, 54 L.Ed.2d 331 (1977) (quoting *Terry v. Ohio*, 392 U.S. 1, 19, 88 S.Ct. 1868, 1878-79, 20 L.Ed.2d 889 (1968)).

2. Reasonableness depends "on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *Id.* at 109, 98 S.Ct. at 332 (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S.Ct. 2574, 2579, 45 L.Ed.2d 607 (1975)).

3. It is reasonable for a law officer as a matter of course to order the driver of a lawfully stopped motor vehicle to exit his vehicle. *Id.* at 110-11, 98 S.Ct. at 333.

4. It is reasonable for a law officer as a matter of course to order the passengers of a lawfully stopped motor vehicle to exit the vehicle. *Maryland v. Wilson*, 519 U.S. 408, 117 S.Ct. 882, 137 L.Ed.2d 41 (1997).

5. On a theory of probable cause to search a motor vehicle, the automobile exception to the warrant requirement permits a search of the entire vehicle and anything in it that could contain the items being searched for. *United States v. Ross*, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982); *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925).

6. "The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found." *Ross*, 456 U.S. at 824, 102 S.Ct. at 2172.

7. In *Ross*, the United States Supreme Court has an opinion in automobile search cases that provides "specific guidance to police and courts in this recurring situation." *Id.* at 826, 102 S.Ct. at 2173 (Powell, J., concurring) (quoting *Robbins v. California*, 453 U.S. 420, 435, 101 S.Ct. 2841, 2850, 69 L.Ed.2d 744 (1981) (Powell, J., concurring in judgment)).

8. Fourth Amendment doctrine is primarily intended to regulate the police in their day-to-day activities and, therefore, should be expressed in terms that are readily

applicable by the law officer in the context of his or her law enforcement activities. *New York v. Belton*, 453 U.S. 454, 458, 101 S.Ct. 2860, 2863, 69 L.Ed.2d 768 (1981). "A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be 'literally impossible of application in the field.' " *Id.* (quoting from LaFave, "Case-By-Case Adjudication" versus "Standardized Procedures": The Robinson Dilemma, 1974 SUP.CT. REV. 127, 141).

9. "When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions . . . between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand." *Ross*, 456 U.S. at 821, 102 S.Ct. at 2171.

Against this backdrop of settled principles, the majority would create an "ifs, ands, and buts" qualifier in the case of the female passenger's purse which is left behind in the male driver's automobile when all of the automobile's occupants have exited the automobile in response to the law officer's lawful request. The majority now requires the law officer to establish an independent probable cause with respect to the purse left behind in the automobile's passenger compartment. In my judgment, the passenger's act of leaving her purse behind as she exited the automobile demonstrates an absence of a reasonable expectation of privacy in that purse. In other words, by leaving the purse behind, the passenger has

taken no precaution in order to maintain her privacy in that particular container. *See Dean v. State*, 865 P.2d 601, 613 (Wyo.1993) (stating factors to consider in determining whether an individual possesses a reasonable expectation of privacy).

The object of the law officer's lawful search in this case was a controlled substance which could have been secreted in a small container, such as the purse which the passenger Houghton had left behind in the passenger compartment. Common sense tells us that the transfer of small containers of controlled substances between an automobile's occupants can occur swiftly, silently, effortlessly, and without detection by even the keenest observer. As for me, the words of those who have carefully studied the problem have force, "it seems absurd to say that the occupants can take the narcotics out of the glove compartment and stuff them in their pockets, and drive happily away after the vehicle has been fruitlessly searched." 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 7.2(e) at 508 (3d ed.1996) (quoting from Model Code of PreArraignment Procedure § SS 260.3(2) at 551-52 (1975)).

I would uphold the district court's denial of Houghton's motion to suppress the incriminating evidence found in her purse. Measured by the United States Supreme Court's Fourth Amendment doctrine, the law officer here acted reasonably.

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 1998

SANDRA HOUGHTON, Appellant (Defendant), v. THE STATE OF WYOMING, Appellee (Plaintiff).	)	No. 96-99

ORDER DENYING PETITION FOR REHEARING

(Filed Apr. 28, 1998)

Appellee, the State of Wyoming, having filed with this Court its Petition for Rehearing together with Brief in Support of Petition for Rehearing, and the Court having reviewed the file and record of the Court, it is

ORDERED that Appellee's Petition for Rehearing be and it hereby is denied.

DATED this 28th day of April, 1998.

FOR THE COURT:**

/s/ **William A. Taylor**
WILLIAM A. TAYLOR
CHIEF JUSTICE

** Justices Thomas and Golden would have granted the Petition for Rehearing.

No. 98-184

FILED
AUG 26 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1997

THE STATE OF WYOMING,

Petitioner,

vs.

SANDRA HOUGHTON,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT FOR
THE STATE OF WYOMING

RESPONDENT'S BRIEF IN OPPOSITION

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42PP

QUESTIONS PRESENTED

I. Whether the issue regarding the suppression of evidence seized during a warrantless search was decided on adequate and independent state grounds.

II. Whether the issue regarding the suppression of evidence seized during a warrantless search was decided on the uniqueness of the facts and circumstances of this case.

III. Whether a warrantless search of a passenger's personal belongings may be conducted without probable cause to believe the passenger has committed a crime or concealed evidence of a crime.

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RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, Sandra Houghton, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the judgment and opinion of the Supreme Court for the State of Wyoming. The court's decision is reported as Houghton v. State, 956 P.2d 363 (Wyo. 1998) and is attached hereto as an appendix.

STATEMENT OF THE CASE

Respondent, Sandra Houghton, was a passenger in a car driven by David Young. The car was pulled over by a Wyoming Highway Patrol Officer after he noticed a faulty brake light and because the car appeared to be speeding. The officer was quickly joined by two other officers. (App. 3).

Upon stopping the car, the first officer on the scene approached the driver's side of the vehicle. While questioning Young, the officer noticed a syringe in Young's pocket. Young was ordered out of the car and searched. At this time, Respondent and another female passenger were also ordered out of the car and searched. (App. 3-4).

Without consent, the first officer on the scene then searched the vehicle. He discovered a closed purse in the rear seat of the car. The officer opened the purse, again without permission, and

found a wallet containing identification naming Sandra Houghton. He further searched the purse and found two syringes. Both syringes contained diluted methamphetamine. (App. 4).

Before trial, Respondent filed a motion asking the district court for an order suppressing all evidence found during the warrantless search. The district court denied the motion. At trial, Respondent was found guilty of felony possession of a controlled substance and was sentenced to a term of not less than two nor more than three years in the Wyoming Women's Center. (App. 4-5).

Respondent appealed her conviction to the Wyoming Supreme Court. The court reversed her conviction, holding that "the search of [Respondent's] purse exceeded the reasonable scope of the search of the car, violating her Fourth Amendment rights." (App. 2).

In reversing Respondent's conviction, the Wyoming Supreme Court adopted the notice test as consistent with its prior state constitutional law decisions. Petitioner in its Statement of the Case mischaracterizes the court's decision by asserting that the court's holding is based *solely* on Fourth Amendment standards. (Petition, p. 4, fn. 2). Petitioner based this conclusion on a single footnote in the opinion, in which the court noted:

> Wyo. Const. art. 1 § 4 is 'somewhat stronger than its federal counterpart, in that under our Wyoming Constitution it is mandatory that the search warrant be issued upon an affidavit.' Hall, 911 P.2d at 1368. Although Houghton's claims rely on both federal and state constitutional mandate, she does not distinguish the protection afforded by the Wyoming Constitution from that of its federal counterpart. See Gronski v. State, 910 P.2d 561, 566 (Wyo. 1996).

(App. 7, fn. 2).

Gronski merely states the court will not expand the protections afforded under the federal constitution unless a proper state constitutional analysis is presented. However, the court's decision to not so expand the protections does not mean the conclusion is based solely on federal law.

REASONS FOR DENYING THE WRIT

I. THE ISSUE REGARDING THE SUPPRESSION OF EVIDENCE SEIZED DURING A WARRANTLESS SEARCH WAS DECIDED ON ADEQUATE AND INDEPENDENT STATE GROUNDS.

In deciding that the district court abused its discretion when it denied Respondent's motion to suppress evidence found during a warrantless search, the Wyoming Supreme Court adopted the "notice" test. (App. 16). Adoption of this test came after a complete analysis of other jurisdictions, federal and state. (App. 11-16). The test itself came originally from a California court and was adopted by the Tennessee Criminal Appeals court. See, State v. Thomas, 818 S.W.2d 350, 359 (Tenn.Crim.App. 1991).

The "notice" test was adopted because it "most closely adheres to our analysis in previous cases." (App. 18). Therefore, while the Wyoming Supreme Court may have relied upon federal law for the purpose of guidance, the decision itself is based on independent and adequate state grounds deeply established with the state court's precedents. See, Michigan v. Long, 463 U.S. 1032, 1040-41, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983).

Thus, this Court should deny the petition rather than render an advisory opinion: "The jurisdictional concern is that we not 'render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal

laws, our review could amount to nothing more than an advisory opinion.'" Michigan v. Long, 463 U.S. at 1042, (quoting Herb v. Pitcairn, 324 U.S. 117, 126, 65 S.Ct. 459, 89 L.Ed.2d 789 (1945)).

In finding that Respondent's constitutional right to be free from unreasonable searches was violated, the court recognized the Wyoming Constitution provides greater protection than the Fourth Amendment. (App. 7, fn. 2). Even though the court did not expressly address the separate state constitutional grounds, the means by which the court reached its decision, *i.e.* the "notice" test, constitutes adequate and independent state grounds which would render any decision from this Court merely advisory.

Since this case was decided on adequate and independent state grounds, this Court should deny the writ of certiorari. Lambrix v. Singletary, 117 S.Ct. 151, 520 U.S. 518, 137 L.Ed.2d 771 (1997).

II. THE ISSUE REGARDING THE SUPPRESSION OF EVIDENCE SEIZED DURING A WARRANTLESS SEARCH WAS DECIDED ON THE UNIQUENESS OF THE FACTS AND CIRCUMSTANCES OF THIS CASE.

In the case at bar, the court made particular findings regarding the propriety of the search conducted upon Respondent's personal belongings. The court applied "the 'notice' test to the facts as related by the arresting officer." (App. 18). Those facts were: (1) "The officer searched the car based on his belief

that the syringe indicated that *the male driver* may have contraband in his car." (App. 19)(emphasis in original). (2) "[T]he officer had no knowledge which indicated Houghton also possessed drugs." (App. 19). (3) "The purse was found behind the area where Houghton was seated until ordered out of the vehicle." (App. 19). (4) It was a lady's purse and the officer acknowledged, "men do not carry purses * * *." (App. 19). (5) "The officer's testimony clearly established that there was no reason to believe the object of the search was placed in the purse prior to the stop." (App. 20). (6) There was no arrest prior to the search. (App. 18, fn. 5). (7) There was no consent to search the purse. (App. 20, fn. 6). And, finally, (7) There was "no reasonable belief that the purse concealed any weapon which would endanger the officers." (App. 18, fn. 5).

Based on these facts, the court concluded the officer should have been "on notice" that the purse was the personal belonging of a passenger. Absent probable cause to believe Respondent was suspected of criminal activity, the search of Respondent's purse was outside the scope of the warrantless search.

The facts of this case are unique and the decision of the Wyoming Supreme Court was based on these distinctive circumstances. "Granting of the writ would not be warranted merely to review the

evidence or inferences drawn from it." General Talking Pictures Corporation v. Western Electric Company, 304 U.S. 175, 178, 58 S.Ct. 849, 82 L.Ed. 1273 (1938). Thus, this case presents no compelling reason for this Court's exercise of its jurisdiction.

III. THE WYOMING SUPREME COURT PROPERLY DECIDED A WARRANTLESS SEARCH OF A PASSENGER'S PERSONAL BELONGINGS MAY NOT BE CONDUCTED WITHOUT PROBABLE CAUSE TO BELIEVE THE PASSENGER HAS COMMITTED A CRIME OR CONCEALED EVIDENCE OF A CRIME.

In United States v. Di Re, 332 U.S. 581, 68 S.Ct. 222, 92 L.Ed. 210 (1948), this Court refused to extend the exception to the warrant requirement contemplated in Carroll v. United States, 267 U.S. 132, 154, 45 S.Ct. 280, 69 L.Ed. 543 (1925), to justify the search of a passenger in a suspected car. In Di Re, this Court assumed there was probable cause to search the car in which Di Re was riding, and queried whether this conferred an incidental right to conduct a warrantless search of Di Re as a passenger who could easily conceal contraband. In answering this query, this Court analogized the search of a visitor of fixed premises to the search of a passenger in a vehicle. In refusing to expand the exception contemplated by Carroll to justify the search of the passenger incident to the search of the car, this Court saw no ground for expanding the rule established in Carroll, and was "not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be

entitled." Di Re, 322 U.S. at 587. The Wyoming Supreme Court's decision reflects this Court's holding in Di Re in their statement that an extension of the Carroll decision "would provide a wholesale surrender of Fourth Amendment protection upon entering an automobile." (App. 23).

In United States v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982), this Court decided whether, in the course of a legitimate warrantless search of an automobile, police were entitled to open containers found within the vehicle. This Court held, "The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there *is probable cause* to believe that it may be found." Ross, 456 U.S. at 824 (emphasis added). Further, in California v. Acevedo, 500 U.S. 565, 566, 111 S.Ct. 1982, 114 L.Ed.2d 619 (1991), this Court emphasized that "[p]olice, in a search extending only to a container within an automobile, may search the container without a warrant *where they have probable cause* to believe that it holds contraband or evidence." (Emphasis added).

In the case at bar, it is undisputed that the officers had no probable cause to search Respondent's purse. (App. 20, fn. 6).

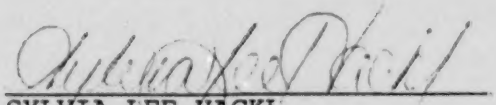
Unlike Ross and Acevedo, this case deals with the personal belongings of Respondent as a passenger where she had a legitimate expectation of privacy. Unlike Carroll, there is no contention that the police had probable cause to search the passenger's personal belongings.

Had the officers in Carroll, Ross, or Acevedo utilized the "notice" test, as adopted in Houghton, the outcome in those cases would have been the same. The "notice" test does not alter the rules of law expressed by this Court. The scope of the warrantless search authorized in Carroll, Ross, and Acevedo still requires probable cause where there is a legitimate expectation of privacy. Without probable cause, the search of Respondent's purse was unreasonable under all three cases. This Court thus has decided the issue Petitioner presents; the Wyoming Supreme Court's decision in Houghton follows the precedent established by this Court.

CONCLUSION

The Wyoming Supreme Court's decision was based on independent and adequate state grounds. The findings of fact are unique to the circumstances of this case. And, the court properly decided a warrantless search of a passenger's personal belongings cannot be conducted without probable cause to believe the passenger has committed a crime or concealed evidence of a crime. Therefore, the petition for a writ of certiorari should be denied.

RESPECTFULLY SUBMITTED,



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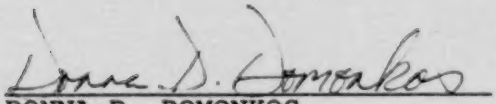

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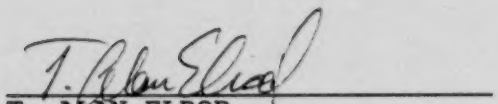

T. ALAN ELROD
Assistant Appellate Counsel

APPENDIX

Sandra HOUGHTON, Appellant (Defendant),
v.
The STATE of Wyoming, Appellee (Plaintiff).

No. 96-99

Supreme Court of Wyoming.

April 3, 1998.

Rehearing Denied April 28, 1998.*

Sylvia L. Hackl, State Public Defender; Donna Domonkos, Appellate Counsel; Michael Dinnerstein, Director, Wyoming Defender Aid Program; T. Alan Elrod and Scott J. Olheiser, Student Interns, for Appellant (Defendant).

William U. Hill, Attorney General; Paul S. Rehurek, Deputy Attorney General; D. Michael Pauling, Senior Assistant Attorney General; Georgia L. Tibbetts, Senior Assistant Attorney General; Theodore E. Lauer, Director, Prosecution Assistance Program; and Sandra Boudreaux, Student Intern, for Appellee (Plaintiff).

Before TAYLOR, C.J., and THOMAS, MACY, GOLDEN and LEHMAN, JJ.

TAYLOR, Chief Justice.

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* Thomas and Golden, JJ., would have granted Rehearing.

Appellant's arrest and conviction on one count of felony possession of a controlled substance was based upon evidence found in her purse during a warrantless search of an automobile in which she was a passenger. On appeal, appellant raises several challenges to her conviction, including the district court's denial of her motion to suppress the evidence found in her purse. We hold that the search of appellant's purse exceeded the reasonable scope of the search of the car, violating her Fourth Amendment rights.

Reversed and remanded.

I. ISSUES

Although appellant, Sandra Houghton (Houghton), identifies four issues on appeal, the dispositive issue is:

> Did the trial court err in denying the Appellant's Motion to Suppress Physical Evidence?

The State of Wyoming, as appellee, phrases the issue as follows:

> Did the district court err in denying appellant's pretrial motion to suppress the methamphetamine seized by law enforcement officers during a warrantless search of David Young's automobile?

II. FACTS

In the early morning hours of July 23, 1995, a Wyoming Highway Patrol Officer stopped an automobile for speeding and a faulty brake light. There were three occupants in the car-the driver, David Young (Young); his girlfriend; and Houghton. Shortly after the stop, the officer was joined by two other law enforcement officers. While the officer was questioning Young, he noticed a syringe in Young's shirt pocket. The officer told Young he was going to get gloves out of the patrol car and would return to question Young about the syringe. While the officer went to his car, another officer kept an eye on the occupants.

Upon his return, the officer ordered Young to step out of the car and to place the syringe on the hood. When the officer asked what the syringe was for, Young responded that he used the syringe to take drugs.

At that point, the passengers were ordered out of the vehicle and were asked for identification. Houghton, identifying herself as Sandra Jones, stated she did not have identification. All occupants were then "[patted] * * * down, to see if there were any weapons or anything."[1] After the pat down yielded no weapons or

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[1] Since the pat down search of Young and the passengers failed to reveal any weapons or contraband, the propriety of the search was not addressed on appeal. However, we are concerned that the officers apparently believed that they were able to search the passengers of the vehicle absent probable cause to believe the passengers were engaged in illegal activity or any indication that the passengers

contraband, the officer searched the car for drugs.

While searching behind the area where the two female passengers had been seated, the officer found a closed "cloth lady's purse." He opened the purse and removed a wallet. Searching the wallet, the officer found Houghton's driver's license. The officer then told Houghton to approach the driver's side of the vehicle, where she stated that the purse was hers. Without further comment, the officer continued his search, removing a brown "wallet bag" containing drug paraphernalia, a syringe containing an estimated 60 cc's of liquid, a black wallet containing drug paraphernalia, a vial, and a syringe with approximately 10 cc's of liquid. After a field test of a small amount of the liquid from the syringe in the brown bag tested positive for methamphetamine, the officer took custody of the two containers, returned the purse to the car, and arrested Houghton for possession of a controlled substance. Young and his girlfriend were released.

Prior to trial, Houghton moved to suppress the evidence found in her purse, asserting there was no probable cause to search her belongings. Following a hearing, the district judge issued a

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posed a danger to the police officers. Here, there was no testimony which established that the driver or the occupants may be armed, and no weapons observed within the vehicle. Indeed, it appears that all the occupants of the car were cooperative throughout the stop. Thus, we perceive no reasonable basis for the pat down search of the passengers under *Terry v.* Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) and its progeny, or *Perry v. State*, 927 P.2d 1158 (Wyo. 1996).

decision letter which denied Houghton's motion to suppress the contents of her purse. Relying on *California v. Acevedo*, 500 U.S. 565, 580, 111 S.Ct. 1982, 1991, 114 L.Ed.2d 619 (1991), the district judge found that the officer had probable cause to search the car for contraband and, therefore, any containers within the car which could hold the contraband were subject to search.

A jury found Houghton guilty of one count of felony possession of a controlled substance. After Houghton unsuccessfully moved for acquittal or a new trial, she was sentenced to not less than two nor more than three years at the Wyoming Women's Center. This timely appeal followed.

III. STANDARD OF REVIEW

On a motion to suppress evidence, the moving party must establish by a preponderance of the evidence that her rights were violated. *Guerra v. State*, 897 P.2d 447, 452 (Wyo. 1995) (*quoting Malcolm v. United States*, 332 A.2d 917, 918 (D.C.App. 1975)). The constitutional touchstone of a search and/or seizure is whether the search unreasonably violated a justifiable expectation of privacy. *Saldana v. State*, 846 P.2d 604, 610-11 (Wyo. 1993). "Whether a search is reasonable is to be determined from the facts and circumstances of the case in light of the 'fundamental criteria' that are found in the Fourth Amendment * * *." *Id.* at 611. We defer to the district court's findings of fact regarding the

circumstances attending the search and seizure and review those findings "pursuant to an abuse of discretion-clearly erroneous standard * * *." *Hall v. State*, 911 P.2d 1364, 1367 (Wyo. 1996). However, whether a search and seizure is unreasonable, thereby violating constitutional protections, is ultimately a question of law which warrants *de novo* review. *Id.*

IV. DISCUSSION

The issue before us is whether the personal belongings of a passenger may be searched under the "automobile exception" when probable cause exists to search the automobile, but there is no probable cause to believe the passenger is involved in criminal activity. Houghton does not contest the probable cause to conduct the search of Young's car for drugs, but asserts that in the absence of probable cause to believe she possessed contraband, the search of her purse violated her justifiable expectation of privacy in her personal belongings. The State counters that the officers had no duty to determine probable cause as to each container within the car, and consequently, the permissible scope of the search included the search of all containers, including a passenger's purse.

The Fourth Amendment of the United States Constitution provides citizens "[t]he right * * * to be secure in their persons, houses, papers, and effects, against unreasonable searches and

seizures * * *."[2] General seizures are prohibited; all searches must be supported by probable cause to believe evidence of a crime will be found.

> "The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant."

Hall, 911 P.2d at 1369 (*quoting Marron v. United States*, 275 U.S. 192, 196, 48 S.Ct. 74, 76, 72 L.Ed. 231 (1927)).

The scope of a search is defined by the probable cause upon which that search is predicated, ***not*** whether the search is conducted pursuant to a warrant or pursuant to a recognized exception to the warrant requirement. The Supreme Court of the United States has unequivocally held that "[t]he scope of a warrantless search based on probable cause is no narrower - and no broader - than the scope of a search authorized by a warrant supported by probable cause." *United States v. Ross*, 456 U.S. 798, 823, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982) *(quoted in Hunter v. State*, 704 P.2d 713, 717 (Wyo. 1985), detailing the line of cases

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[2] Wyo. Const. art. 1, § 4 is "somewhat stronger than its federal counterpart, in that under our Wyoming Constitution it is mandatory that the search warrant be issued upon an affidavit." Hall, 911 P.2d at 1368. Although Houghton's claims rely on both federal and state constitutional mandate, she does not distinguish the protection afforded by the Wyoming Constitution from that of its federal counterpart. *See Gronski v. State*, 910 P.2d 561, 566 (Wyo. 1996).

leading to the holding in *Ross*). Neither is the permissible scope of the search dependent on the place being searched, but on the object of the search.

> A warrant to search a vehicle would support a search of every part of the vehicle ***that might contain the object of the search***. When a legitimate search is under way, and ***when its purpose and its limits have been precisely defined,*** nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.

Ross, 456 U.S. at 821 (emphasis added). *See also Acevedo*, 500 U.S. at 580.

Thus, as *Ross* and *Acevedo* make clear, the permissible scope of the warrantless search of Young's car under the automobile exception is identical to a search conducted pursuant to a warrant. The problem in this case is that while Houghton's purse could physically contain the object of the search, there was no probable cause to believe that contraband would be found in her personal belongings. Therefore, the question is, if a warrant had issued on the basis that ***Young*** held drugs in his car, whether the search of the personal effects of a ***passenger or guest*** would be within the scope of the warrant.

The United States Supreme Court has not addressed the permissibility of searching a guest's or passenger's belongings, but has considered the search of a guest's person. *Ybarra v. Illinois,* 444 U.S. 85, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979). In *Ybarra,* a search was conducted pursuant to a warrant to search the premises of the Aurora Tap Tavern and the person of the bartender, "Greg," based on probable cause that Greg was dealing drugs while at work. During the search, the officers conducted a pat down search of a customer in the bar, resulting in the discovery that the patron carried a quantity of drugs. The United States Supreme Court held that the pat down search was an unconstitutional violation of the patron's reasonable expectation of privacy, stating: "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." *Ybarra,* 444 U.S. at 91.

> Where the standard is probable cause, ***a search or seizure of a person must be supported by probable cause particularized with respect to that person.*** This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be. The Fourth and Fourteenth Amendments protect the "legitimate expectations of privacy" of persons, not places. * * *
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> Each patron who walked into the Aurora Tap Tavern on March 1, 1976, was clothed with constitutional protection against an unreasonable search or an unreasonable

> seizure. That individualized protection was separate and distinct from the Fourth and Fourteenth Amendment protection possessed by the proprietor of the tavern or by "Greg." Although the search warrant, issued upon probable cause, gave the officers authority to search the premises and to search "Greg," it gave them no authority whatever to invade the constitutional protections possessed individually by the tavern's customers.

Ybarra, 444 U.S. at 91-92. *See also United States v. Di Re*, 332 U.S. 581, 587, 68 S.Ct. 222, 92 L.Ed. 210 (1948) ("We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled.").

Although the United States Supreme Court's direct concern in *Ybarra* was the impermissible intrusion on the person rather than the belongings of the patron, courts have recognized that "special concerns" are raised "when the items searched belong to * * * visitors to the premises described in the warrant." *State v. Andrews*, 201 Wis.2d 383, 549 N.W.2d 210, 212 (1996). "Such searches may become personal searches outside the scope of the premises search warrant requiring independent probable cause" for searching the personal item at issue. *United States v. Giwa*, 831 F.2d 538, 544 (5th Cir. 1987).

Jurisdictions considering the problem have reached different conclusions as to when separate probable cause is necessary to

search the belongings of a visitor to the premises. Generally, three tests have evolved when analyzing this issue: the "physical proximity" or "physical possession" test; the "relationship" test; and the prodigy of the relationship test, the "notice" test. *See, generally,* 2 Wayne R. LaFave, *Search and Seizure,* § 4.10(b) (3rd ed. 1996).

A substantial minority of courts have adopted the "physical proximity" test, which allows the search of objects, but prohibits the search of a person. The physical nexus between the person and the object searched determines whether the item will be considered an extension of the "person." *United States v. Teller,* 397 F.2d 494, 497 (7th Cir.), *cert. denied,* 393 U.S. 937 (1968)(search of woman's purse upheld when purse placed on the bed during search).[3] If the object is close enough to be considered an extension of its owner, the search is outside the scope of the search of another's premises.

Andrews is illustrative of contemporary application of the

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[3] *See also United States v. Branch,* 545 F.2d 177, 182 (D.C. Cir. 1976) (search not permitted where bag being carried on shoulder of person who walked into residence while search being executed, combination of factors must be considered); *United States v. Johnson,* 475 F.2d 977, 979 (D.C. Cir. 1973) (upholding search of purse placed on table in front of visitor); *People v. Coleman,* 436 Mich. 124, 461 N.W.2d 615, 619 (1990) (adopts "physical proximity" test but facts sufficient to support reasonable belief that defendant not mere visitor and existence of separate probable cause to search the purse); *State v. Wills,* 524 N.W.2d 507, 511-12 (Minn.App. 1994) (upholding search of safe under both "physical proximity" and "notice" tests); Com. v. *Reese,* 520 Pa. 29, 549 A.2d 909, 912 (1988); and *State v. Jackson,* 873 P.2d 1166, 1168 (Utah App. 1994).

"physical proximity" test. The Wisconsin court held that police executing a search warrant for private premises may search all items that are "plausible repositories" for objects of the search ***except*** those worn by or in physical possession of persons whose search is not authorized by warrant. *Andrews,* 549 N.W.2d at 218. Noting that none of the tests courts have used to determine whether a visitor's belongings are within the scope of a search have been without criticism, the Wisconsin court found that the "physical proximity" test comports with *Ybarra* by distinguishing the search of a person from a less intrusive search of belongings. The Wisconsin court also found the "physical proximity" test to be less susceptible to abuse, more easily applied, and more likely to render consistent results regarding admissibility of the evidence at trial. *Andrews,* 549 N.W.2d at 217.

While our analysis is similar to that of the Wisconsin court, we are not persuaded that the "physical proximity" approach affords sufficient recognition of reasonable expectations of privacy in the absence of individualized probable cause. Neither are we convinced that "physical proximity" provides the most efficacious balance between legitimate individual and state interests.

A majority of courts have rejected the "physical proximity" test, generally on the rationale that "the protective boundary established by requiring a search warrant should encompass those

extensions of a person which he reasonably seeks to preserve as private, regardless of where he may be." *United States v. Micheli*, 487 F.2d 429, 432 (1st Cir. 1973). In *Micheli*, the court further opined:

> A focus on actual physical possession is too narrow, however, in that it would leave vulnerable many personal effects, such as wallets, purses, cases, or overcoats, which are often set down upon chairs or counters, hung on racks, or checked for convenient storage. The Fourth Amendment's basic interest in protecting privacy * * * and avoiding unreasonable governmental intrusions * * * is hardly furthered by making its applicability hinge upon whether the individual happens to be holding or wearing his personal belongings after he chances into a place where a search is underway. The rudest of governmental intrusions into someone's private domain may occur by way of a search of a personal belonging which had been entrusted to a nearby hook or shelf. The practical result of such a rule may be to encourage the government to obtain search warrants for places frequented by suspicious individuals, such as infamous bars, then lie in wait for those individuals to enter and make themselves comfortable.

Id. at 431.

Based on this reasoning, courts have rejected the "physical proximity" test in favor of either a "relationship" test, a "notice" test, or a combination of the two. The "relationship" test looks to the nexus between the person, the effects searched,

and the premises. Under this approach, if the items belong to someone who is more than a "visitor" or the effects have a special relationship to the place, then they are part of the premises which may be searched. If not, the personal effects are outside the scope of a premises warrant. *United States v. Young*, 909 F.2d 442, 445 (11th Cir. 1990), *cert. denied*, 502 U.S. 825 (1991); *Giwa*, 831 F.2d at 545; *Micheli*, 487 F.2d at 430-31.

The "relationship" approach has not been without its critics. *See State v. Jackson*, 873 P.2d 1166, 1168 (Utah App. 1994) and *Andrews*, 549 N.W.2d at 217. In *State v. Nabarro*, 55 Haw. 583, 525 P.2d 573, 577 (1974), the shortcomings of the "relationship" approach were identified as follows:

> [P]olice cannot realistically be expected to avoid searching the property of a mere visitor to the premises unless they are aware of its ownership. Absent a requirement of such awareness, the effective execution of a warrant to search a place would be impossible since the police could never be sure that a plausible repository for items named in the warrant belongs to a resident, and hence is searchable, or to a non-resident, and hence is not searchable. Because of this, without notice of some sort of the ownership of a belonging, the police are entitled to assume that all objects within premises lawfully subject to search under a warrant are part of those premises for the purpose of executing the warrant.

We agree that the "relationship" test used by several courts

provides an unworkable and impractical analysis given the time constraints attendant upon most searches. Even the most particular description of "the place to be searched" will not avoid the uncertainty of the ownership of "plausible repositories" in some circumstances. The holding in *United States v. Gottschalk,* 915 F.2d 1459, 1461 (10th Cir. 1990) echoes the difficulties inherent in the real-life application of the "relationship" test:

> [Defendant] urges that we should adopt a strict limitation on the scope of a "premises" search warrant to exclude any vehicles other than those actually owned or controlled by the owner of the premises. The difficulty with such a limitation, as formulated, is demonstrated by this case. The circumstances surrounding the search of the Cadillac were such that at the time the officers decided to proceed it would have been difficult to determine with precision whether the car was in fact controlled by [the person identified in the warrant] or whether [defendant] retained full control and dominion. * * * A legal limitation based on such a difficult and uncertain factual determination is neither practical nor desirable where it must be applied in cases such as this, late at night, in the course of considerable surrounding police activity, without the benefit of full factual inquiry, and by non-legally trained personnel.

The Tenth Circuit Court of Appeals' solution applied a "notice" approach:

> We believe the better rule in these circumstances is to define the scope of the warrant to include those automobiles either

> actually owned or under the control and dominion of the premises owner, or, alternatively, ***those vehicles which appear, based on objectively reasonable indicia present at the time of the search, to be so controlled. Thus where the officers act reasonably in assuming that the automobile is under the control of the premises owner, it is included in the warrant.***

Id. at 1461 (emphasis added). That analysis supported our decision in *Guerra,* 897 P.2d at 459, upholding the admission of evidence seized from two vehicles adjacent to the premises of the defendant.

We extend that reasoning here and adopt the "notice" test in circumstances where we must determine the reasonableness of the search of a visitor's personal effects while executing a premises search. In Wyoming, "'the permissibility of a particular law enforcement practice is judged by balancing its intrusion on...Fourth Amendment interests against its promotion of legitimate government interests.'" *Jones v. State,* 902 P.2d 686, 692 (Wyo. 1995) *(quoting Texas v. Brown,* 460 U.S. 730, 737-39, 103 S.Ct. 1535, 1541-42, 75 L.Ed.2d 502 (1983)). *See also Collins v. State,* 854 P.2d 688, 692 (Wyo. 1993) and *Saldana,* 846 P.2d at 610-11 (holding that reasonableness of seizure of a person is determined by balancing the nature of the intrusion against the governmental interest). After reviewing the approaches used by other courts, we are persuaded that the "notice" test affords the best balance

between the legitimate interests of both the individual and law enforcement.

Under the "notice" test, police officers may assume that all containers on the premises may be searched unless they know or should know that the containers belong to someone not contemplated in the warrant or amenable to search on the basis of probable cause. The practical parameters applied under a "notice" approach are that police may search the visitor's belongings on the premises under a proper assumption that all personal property belongs to the resident if:

1. The visitor's personal items might serve as a plausible repository of the object of the search, unless the officer knows the property belongs to another; and

2. If the officer knows the property belongs to the visitor, they may not rely on the authority conferred by the warrant unless;

3. Someone within the premises had the opportunity to conceal the contraband within the personal effects of the visitor immediately prior to the execution of the warrant.

State v. Thomas, 818 S.W.2d 350, 359 (Tenn.Crim.App. 1991) (search of visitor's purse beyond scope of warrant to search premises of male suspect because not reasonable to believe suspect owned

woman's pocketbook).[4] The "notice" test provides law enforcement officers clear guidelines, and can be quickly implemented in an emergency situation, but does not unnecessarily abrogate individualized Fourth Amendment protection merely because a jacket is removed or a purse is placed on a floor or table. Moreover, the "notice" approach most closely adheres to our analysis in previous cases. *See Gronski v. State*, 910 P.2d 561, 564 (Wyo. 1996) (warrantless search of duffel bag in trunk of car held proper because probable cause existed to believe the duffel bag contained marijuana) and *Hunter*, 704 P.2d at 717 (warrantless search defined by the object and the places in which there is probable cause to believe it may be found).[5]

Applying the "notice" test to the facts as related by the arresting officer, we find that there was no probable cause to search Houghton's purse. The officer testified that there were two

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[4] *See also Waters v. State*, 924 P.2d 437, 440 (Alaska App. 1996) (absent a clear notice that the purse belonged to female visitor rather than female identified in warrant, search upheld); *People v. McCabe*, 144 Cal.App.3d 827, 192 Cal.Rptr. 635, 636-37 (1983); *Wright v. State*, 221 Ga.App. 559, 472 S.E.2d 128, 129 (1996) (jacket could have belonged to anyone in home, search upheld, distinguishing *Childers v. State*, 158 Ga.App. 613, 281 S.E.2d 349 (1981) where officers should have known that purse belonged to visitor because she was only female on premises); *Nabarro*, 525 P.2d at 576-78; and *State v. Lambert*, 238 Kan. 444, 710 P.2d 693, 697-98 (1985).

[5] The "automatic companion rule" adopted in our recent holding in *Perry*, 927 P.2d 1158 is premised solely on the "justifiable concern for officer safety in the context of a lawful arrest of Perry, Jr. * * *. " Id. at 1163. It is, therefore, not applicable in Houghton's case as there was no arrest prior to the search and no reasonable belief that the purse concealed any weapon which would endanger the officers.

women passengers and a male driver in the car when it was stopped. The officer searched the car based on his belief that the syringe indicated that **the male driver** may have contraband in his car. At the time of the search, the officer had no knowledge which indicated Houghton also possessed drugs. The purse was found behind the area where Houghton was seated until ordered out of the vehicle. The officer further acknowledged that it was a "lady's purse" and that "men do not carry purses * * *."

At that point, the officer knew, or should have known, that the purse was not the possession or in the control of the driver, but was the personal effect of one of the non-suspect passengers. Thus, under the "notice" test, the purse was not within the scope of the search of the automobile unless the officer had some reason to believe that "someone within the premises has had the opportunity to conceal the contraband within the personal effects of the visitor immediately prior to the execution of the * * * [search]." *Thomas*, 818 S.W.2d at 359.

Since part of Houghton's defense was that one of the "wallets" was not hers, the State went to great lengths to show there was no opportunity for the occupants of the car to place contraband in Houghton's purse immediately prior to or during the stop. The officer testified that he used his lights to illuminate the inside of the car at all times, and that there were no "unusual movements

or sudden movements within the vehicle itself." He also testified that the occupants were constantly under his observation or that of another officer. The officer's testimony clearly established that there was no reason to believe the object of the search was placed in the purse prior to the stop, no probable cause to believe that either woman was carrying drugs, and no reason to believe that the purse belonged to Young. Consequently, the closed purse was not within the scope of the warrantless search for the contraband in the possession or control of the driver. Since the search of the purse was not based on probable cause or within the scope of the search of Young's car, the district court erred in denying Houghton's motion to suppress the evidence found therein.[6]

The State does not rely on any of the tests described above, but urges that we follow the recent Colorado Supreme Court ruling in *People v. McMillon,* 892 P.2d 879 (Colo. 1995). There, the female driver and McMillon, the female passenger, were asked to step outside a vehicle which had been stopped for equipment violations. While questioning the driver, the deputy observed a syringe "between the driver's seat and the console between the seats." *Id.* at 880. The deputy then arrested the driver and proceeded to

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[6] It is uncontested that there was no consent to search the purse, and no arrest other than that based on the contraband found within the purse. Neither was there reason to believe that the purse contained any weapon. Therefore, no alternative basis on which to uphold the search of Houghton's purse need be discussed.

conduct an "inventory search incident to the driver's arrest." *Id.* During the search of the vehicle, the deputy opened McMillon's purse which she had left on the passenger's seat and discovered controlled substances within. *Id.* at 880-81.

In support of its conclusion that the ownership of the purse was irrelevant under the automobile exception, the Colorado Supreme Court offered this cursory analysis:

> We further conclude that neither *Acevedo* [500 U.S. 565] nor *Ross* [456 U.S. 798] requires a separate determination of probable cause for each closed container found within a vehicle. Accordingly, because Deputy Hicks had probable cause to search the vehicle under the automobile exception, he also had probable cause to lawfully search McMillon's purse located within the passenger compartment of the automobile, irrespective of whether Deputy Hicks knew or should have known that the purse belonged to McMillon.

McMillon, 892 P.2d at 883. Although the facts of *McMillon* may be distinguished from those before us by the gender and arrest of the suspect, the Colorado Supreme Court's analysis does not so much as nod to the articulation of the individual nature of Fourth Amendment guarantees found in *Ybarra*, 444 U.S. 85. Neither does the analysis attempt to rationalize the governmental intrusion against a reasonable expectation that one's closed purse or wallet will not be searched in the absence of probable cause that it may contain

evidence of a crime.[7] Indeed, *McMillon's* holding ostensibly allows officers to order non-suspect passengers to leave their belongings in a car while they must exit, so that the car and its contents may be searched.

"The word 'automobile' is not a talisman in whose presence the Fourth Amendment disappears." *Coolidge v. New Hampshire,* 403 U.S. 443, 461, 91 S.Ct. 2022, 2035, 29 L.Ed.2d 564 (1971). "The purpose of the Fourth Amendment's requirement of reasonableness 'is to preserve that degree of respect for the privacy of persons and the inviolability of their property that existed when the provision was adopted--even if a later, less virtuous age should become accustomed to considering all sorts of intrusion 'reasonable."' *Richards v. Wisconsin,* ___ U.S. ___, 117 S.Ct. 1416, 1421 n.4, 137 L.Ed.2d 615 (1997) *(quoting Minnesota v. Dickerson,* 508 U.S. 366, 380, 113 S.Ct. 2130, 2139, 124 L.Ed.2d 334 (1993), Scalia, J., concurring). We cannot agree that the automobile exception removes from judicial review ***all*** searches of ***all*** containers physically capable of containing the object of the search. To so rule would

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[7] Neither *Love v. State,* 254 Ga. 697, 334 S. E.2d 173 (1985) nor *State v. Vermuele,* 241 Neb. 923, 492 N. W.2d 24 (1992) contain facts similar to the case before us. In *Love,* 334 S. E.2d at 174, the court held that the warrantless search of defendant's companion's purse was authorized. Defendant was convicted of possession of drugs, largely on evidence furnished by his female companion who had physical possession of the contraband at the time of arrest and who had given consent to search her boyfriend's car where her purse was located. *Id.* In *Vermuele,* 492 N.W.2d at 30-32, the court held that the warrantless search of a passenger's wallet was valid because probable cause existed to search the vehicle for contraband. However, in that case, the passenger was searched and drugs were found on his person, leading to his arrest prior to the search of the wallet. *Id.* at 29.

provide a wholesale surrender of Fourth Amendment protection upon entering an automobile.

V. CONCLUSION

Generally, once probable cause is established to search a vehicle, an officer is entitled to search all containers therein which may contain the object of the search. However, if the officer knows or should know that a container is the personal effect of a passenger who is not suspected of criminal activity, then the container is outside the scope of the search unless someone had the opportunity to conceal the contraband within the personal effect to avoid detection. Here, the officers knew or should have known that the purse did not belong to the driver, but to one of the passengers. Since there was no probable cause to search the passengers' personal effects and no reason to believe that contraband had been placed within the purse, the search was unreasonable and in violation of the Fourth Amendment right to be free from such governmental intrusion. We, therefore, reverse the district court's denial of Houghton's motion to suppress and remand this case for disposition in accord with this opinion.

Golden, J., dissenting, with whom Thomas, J., joins.

I respectfully dissent. A number of points are now settled in Fourth Amendment jurisprudence:

1. The touchstone of the United States Supreme Court's Fourth Amendment analysis is always "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Pennsylvania v. Mimms,* 434 U.S. 106, 108-09, 98 S.Ct. 330, 332, 54 L.Ed.2d 331 (1977) (quoting *Terry v. Ohio,* 392 U.S. 1, 19, 88 S.Ct. 1868, 1878-79, 79 L.Ed.2d 889 (1968)).

2. Reasonableness depends "on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *Id.* at 109, 98 S.Ct. at 332 (quoting *United States v. Brignoni-Ponce,* 422 U.S. 873, 878, 95 S.Ct. 2574, 2579, 45 L.Ed.2d 607 (1975)).

3. It is reasonable for a law officer as a matter of course to order the driver of a lawfully stopped motor vehicle to exit his vehicle. *Id.* at 110-11, 98 S.Ct. at 333.

4. It is reasonable for a law officer as a matter of course to order the passengers of a lawfully stopped

motor vehicle to exit the vehicle. *Maryland v. Wilson*, - U.S. -, 117 S.Ct. 882, 137 L.Ed.2d 41 (1997).

5. On a theory of probable cause to search a motor vehicle, the automobile exception to the warrant requirement permits a search of the entire vehicle and anything in it that could contain the items being searched for. *United States v. Ross*, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982); *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925).

6. "The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found." *Ross*, 456 U.S. at 824, 102 S.Ct. at 2172.

7. In *Ross*, the United States Supreme Court has an opinion in automobile search cases that provides "specific guidance to police and courts in this recurring situation." *Id.* at 826, 102 S.Ct. at 2173 (Powell, J., concurring) (quoting *Robbins v. California*, 453 U.S. 420, 435, 101 S.Ct. 2841, 2850, 69 L.Ed.2d 744 (1981) (Powell, J., concurring in judgment)).

8. Fourth Amendment doctrine is primarily intended to regulate the police in their day - to - day activities and, therefore, should be expressed in terms that are readily applicable by the law officer in the context of his or her law enforcement activities. *New York v. Belton,* 453 U.S. 454, 458, 101 S.Ct. 2860, 2863, 69 L.Ed.2d 768(1981).

"A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be 'literally impossible of application in the field.'" *Id.* (quoting from LaFave, "Case-By-Case Adjudication" versus "Standardized Procedures": The Robinson Dilemma, 1974 SUP. CT. REV. 127, 141).

9. "When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions . . . between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand." *Ross,* 456 U.S. at 821, 102 S.Ct. at 2171.

Against this backdrop of settled principles, the majority would create an "ifs, ands, and buts" qualifier in the case of the female passenger's purse which is left behind in the male driver's automobile when all of the automobile's occupants have exited the automobile in response to the law officer's lawful request. The majority now requires the law officer to establish an independent probable cause with respect to the purse left behind in the automobile's passenger compartment. In my judgment, the passenger's act of leaving her purse behind as she exited the automobile demonstrates an absence of a reasonable expectation of privacy in that purse. In other words, by leaving the purse behind, the passenger has taken no precaution in order to maintain her privacy in that particular container. *See Dean v. State*, 865 P.2d 601, 613 (Wyo. 1993) (stating factors to consider in determining whether an individual possesses a reasonable expectation of privacy).

The object of the law officer's lawful search in this case was a controlled substance which could have been secreted in a small container, such as the purse which the passenger Houghton had left behind in the passenger compartment. Common sense tells us that the transfer of small containers of controlled substances between an automobile's occupants can occur swiftly, silently, effortlessly, and without detection by even the keenest observer. As for me, the words of those who have carefully studied the

problem have force, "it seems absurd to say that the occupants can take the narcotics out of the glove compartment and stuff them in their pockets, and drive happily away after the vehicle has been fruitlessly searched." 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 7.2(e) at 508 (3d ed. 1996) (quoting from Model Code of Pre-Arraignment Procedure § SS 260.3(2) at 551-52 (1975)).

I would uphold the district court's denial of Houghton's motion to suppress the incriminating evidence found in her purse. Measured by the United States Supreme Court's Fourth Amendment doctrine, the law officer here acted reasonably.

FILED
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No. 98-184

In The

Supreme Court of the United States

October Term, 1998

THE STATE OF WYOMING,

Petitioner,

vs.

SANDRA HOUGHTON,

Respondent.

On Writ Of Certiorari
To The Wyoming Supreme Court

JOINT APPENDIX

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Petition For Certiorari Filed July 27, 1998
Certiorari Granted September 29, 1998

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IN THE STATE OF WYOMING)
) SS.
COUNTY OF NATRONA)

COUNTY OF NATRONA

NATRONA COUNTY COURT
Case No.
DA No.
Docket No.

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
CRIMINAL ACTION NO. 12880

THE STATE OF WYOMING,)
Plaintiff,)
vs.)
SANDRA HOUGHTON,)
Defendant.)

INFORMATION

(Filed Aug. 14, 1995)

COMES NOW John A. Masterson, Assistant District Attorney, Seventh Judicial District, State of Wyoming, and in the name and by the authority of the State of Wyoming, informs the Court and gives the Court to understand that SANDRA HOUGHTON, late of the County aforesaid, on or about the 23rd day of July, 1995, in the County of Natrona, in the State of Wyoming, did unlawfully

and knowingly obstruct impede, or interfere, with a peace officer, namely Delane Baldwin, of the Wyoming

Highway Patrol, who was engaged in the lawful performance of his official duties, in violation of W.S. 1977, as revised § 6-5-204(a).

COUNT II

That SANDRA HOUGHTON on or about the 23rd day of July, 1995, in the County of Natrona, in the State of Wyoming, did unlawfully possess a controlled substance, namely: Methamphetamine, Schedule II, W.S. 1977, as revised, § 35-7-1016(d), and in a liquid amount greater than three three-tenths (0.3) of a gram, in violation of W.S. 1977, as amended, § 35-7-1031(c)(iii).

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Wyoming.

DATED this 24th day of July, 1995.

/s/ John A. Masterson
John A. Masterson,
Assistant District Attorney
Seventh Judicial District
County of Natrona
State of Wyoming

Defendant pleads NG

Dated this 29th day of Aug., 1995.

Bond – 1500 c/s.

STATE OF WYOMING)
) SS.
COUNTY OF NATRONA)

I, Sue Pate, Clerk of the District Court within and for the County and State aforesaid, do hereby certify that the

within and foregoing is a true and correct copy of the original information filed, and appears of record in my office.

SUE PATE, Clerk of District Court

By: _____
Deputy

THE STATE OF WYOMING)
) SS.
COUNTY OF NATRONA)

SHERIFF'S RETURN

I hereby certify that received the within Information on the ___ day of _____, 1995, at the hour of ___ o'clock, ___.M. and I served the same at the County and State aforesaid, by delivering a certified copy of the original information to the within named _____ with all the endorsements thereon, the ___ day of _____, 1995, at the hour of _____ o'clock, ___.M.

DAVE DOVALA, SHERIFF
OF NATRONA COUNTY

By: _____
Deputy

ARRAIGNMENT, WHEN DEFENDANT APPEARS WITH COUNSEL

Defendant, being present in person, and by counsel, Monica Sharum, and after hearing (✓) the substance of the charge explained ((the Information read) entered

her plea of not guilty as charged, this 29th day of Aug., 1995.

SUE PATE, Clerk of District Court

By: /s/ Sue Pate
~~Deputy~~

CONDITIONS OF BOND

Cont'd

ARRAIGNMENT, WHEN DEFENDANT CHANGES PLEA

Defendant, appearing in person, and by counsel, _____ withdrew his plea of _____ and enters his plea of _____ this ___ day of ___, 1995.

SUE PATE, Clerk of District Court

By: /s/ _____
Deputy

CONDITIONS OF BOND

_____

ARRAIGNMENT, WHEN DEFENDANT APPEARS WITHOUT COUNSEL

Defendant, appearing in person, without counsel, after having been advised by the Court of the seriousness of the crime charged in the Information and of (his)(her) right to have counsel appointed by the Court, if Defendant desires counsel and was without funds to employ one, and having been advised of the Defendant's right to

trial by jury, if so desire, and Defendant having stated that neither counsel nor trial by jury was desire, and after hearing ( ) (the substance of the charge explained) ( ) (the information read) entered ____ plea of ____ _____ as charged, this ___ day of ___, 1995.

SUE PATE, Clerk of District Court

By: /s/ _____
Deputy

STATE OF WYOMING)
) §
COUNTY OF NATRONA)

IN THE COUNTY COURT OF
NATRONA COUNTY
Case No. 12880

THE STATE OF WYOMING,)
PLAINTIFF,)
VS.) Docket no.
/s/ Sandra Houghton) CR-9507-0266
DEFENDANT.)

ORDER APPOINTING COUNSEL AND REQUIRING PERIODIC PAYMENTS

(Filed Aug. 14, 1995)

The defendant above named having requested a Court appointed counsel, and the Court having inquired of him under oath regarding his financial abilities;

The Court finds and concludes:

1. The Defendant is charged with a serious crime and is not currently represented by an attorney in this matter.

2. The Defendant is presently unable to provide for full payment of attorney's fees and other expenses of representation, W.S. Section 7-6-106(c) and therefore qualifies for the services of a Court appointed attorney.

3. The Defendant can afford to pay the sum ordered herein to partially defray the costs of representation, Section 7-6-106(c).

NOW THEREFORE, IT IS HEREBY ORDERED:

1. That the Public Defender, Attorney at Law is appointed to represent the defendant above named.

2. That the defendant shall pay to the Clerk of the County Court the sum of $to be set per month, beginning _____ and continuing each month thereafter until further Order of the this and/or District Court. (Failure to make these payments may result in punishment for contempt.)

3. That the Defendant shall immediately report to the Court anything that would change any answer on the accached affidavit.

DATED this 31st day of July, 1995.

BY THE COURT:

/s/ David Park

CERTIFICATE OF SERVICE

I, Debbie May, hereby certify that a copy of this Order was served upon the Defendant by mailing a copy to the mailing address given to the Court by the Defendant; that a copy has been delivered through the regular course of business to the Public Defender's office this 31 day of July, 1995.

/s/ Debbie May
Clerk

STATE OF WYOMING)
) SS
COUNTY OF NATRONA)

IN THE COUNTY COURT
NATRONA COUNTY, WYOMING
Criminal Docket
No. CR-9507-0266
CR-9507-0267

STATE OF WYOMING,
Plaintiff,
vs.
Sandra Kay Houghton
Defendant.

ORDER

(Filed Aug. 14, 1995)

The PRELIMINARY HEARING in the above entitled matter having come on regularly for hearing and there appearing John Masterson County Attorney for the State of Wyoming and Monica Sharum Attorney for the defendant Sandra Kay Houghton and the Court being fully advised in the premises finds that defendant waived preliminary hearing before Judge David B. Park

NOW THEREFORE it is ORDERED that the Defendant be and he hereby is bound over to the District Court for the 7th Judicial District, Casper, Natrona County, Wyoming to

appear therein _____ to answer said charge in the within complaint and not to depart therefrom except upon order of the said District Court; and it is further ORDERED that pending Defendant's appearance in and further order by the District Court his bond heretofor made in this court be and the same hereby is continued pending appearance in the district court.

DONE IN OPEN COURT this 11th day of August 1995.

/s/ David B. Park
COUNTY JUDGE/
COMMISSIONER

IN THE DISTRICT COURT OF NATRONA, WYOMING
SEVENTH DISTRICT OF WYOMING
CRIMINAL ACTION NO. 12880

THE STATE OF WYOMING,
PLAINTIFF,
VS.
SANDRA HOUGHTON,
DEFENDANT.

MOTION TO SUPPRESS ITEMS
DERIVED FROM ILLEGAL SEARCH
(Filed Sep. 05, 1995)

COMES NOW the Defendant, by and through her attorney, Monica A. Sharum, and pursuant to Rule 12 WRCrP, the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, Article I Sections 4 and 6 of the Wyoming Constitution, and the Wyoming Rules of Evidence and moves the Court to Order a Suppression of all evidence obtained from stop of vehicle on July 23, 1995.

1. That on July 23, 1995 a said above mention car was stopped.

2. A search of the above car was then conducted without a warrant.

3. A search of all containers in said car was then conducted.

4. No consent was given for the search.

WHEREFORE THE DEFENDANT PRAYS:

1. That the Court Order a Suppression of all evidence from stop of vehicle on July 23, 1995.

2. For such other relief as the Court deems proper.

DATED this 5 day of September, 1995.

/s/ Monica A. Sharum
MONICA A. SHARUM

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion was served upon the attorney for the State of Wyoming this 5 day of ~~June~~ September, 1995.

/s/ Monica A. Sharum
MONICA A. SHARUM

STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
Criminal Action No. 12880

THE STATE OF WYOMING,)
Plaintiff,)
v.)
SANDRA HOUGHTON,)
Defendant.)

MOTION TO SUPPRESS

(Filed Oct. 17, 1995)

The above-entitled matter came on for hearing on MOTION TO SUPPRESS before the HONORABLE DAN SPANGLER, a Judge of the Seventh Judicial District of Wyoming, in the District Courtroom, Natrona County Courthouse, Casper, Natrona County, Wyoming, at the hour of 10:05 a.m., on the 27TH of SEPTEMBER, 1995.

APPEARANCES

For the State:
JOHN MASTERSON,
Casper, Wyoming,
Assistant District Attorney.

For the Defendant:
MONICA SHARUM,
Casper, Wyoming,
Assistant Public Defender.

The defendant also appeared in person.

[p. 2] WEDNESDAY, SEPTEMBER 27, 1995, MORNING SESSION, 10:05 a.m.

PROCEEDINGS

THE COURT: The Court will come to order in the case of the State of Wyoming versus Sandra Houghton, Criminal Action No. 12880. I believe we're here on your motion, Ms. Sharum.

MS. SHARUM: Yes, sir. Your Honor, we're here on a Motion to Suppress the evidence found in a warrantless search of a car on July 23, 1995.

THE COURT: Which side wishes to proceed first?

MR. MASTERSON: Your Honor, the State will present evidence, in the form of testimony, from the highway patrolman involved in the stop. And with that in mind, we would call Delane Baldwin.

DELANE BALDWIN,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MASTERSON:

Q Sir, would you tell your name and occupation, please.

A Delane Baldwin, and I'm with the Wyoming Highway Patrol.

Q And were you working in that capacity on July 23, of this year?

[p. 3] A Yes, I was.

Q During the early morning hours of that day, you had the occasion to stop a vehicle; is that correct?

A Yes, I did.

Q And that vehicle contained the defendant in this case; is that correct?

A That's correct.

Q Was she driving that vehicle?

A No, she was not.

Q And where was she sitting when you stopped that vehicle?

A She was in the passenger seat of the vehicle. David Young was the driver of the vehicle.

Q What was the reason for that stop?

A The vehicle was speeding. Some of the lights on the vehicle did not work.

Q And approximately where – excuse me. Where did you stop the vehicle?

A I observed the vehicle on the interstate, and I stopped it at the Evansville Mini Mart.

Q And that's located in Natrona County?

A Yes, it is.

Q When you contacted the driver of that vehicle, Mr. Young, did you notice anything about [p. 4] him?

A I spoke with him. And during our conversation, I noticed a small syringe in his – in his shirt pocket.

Q And what is the relevance of that, in your occupation?

A Syringes are commonly used for talking drugs, illegal drugs.

Q Was Mr. Young still seated in the vehicle when you saw that?

A Yes, he was.

Q Did you ask him about that?

A Yes, I did.

Q And what did he tell you?

A He took the syringe out and set it on the vehicle. And I asked him what the syringe was for, and he told me that he used it to take drugs.

Q What did you do then?

A I had all the people in the vehicle exit, and I padded them all down, to see if there were any weapons or anything. And then I did a search on the vehicle.

Q How many people were in the vehicle?

A I believe there were three.

Q And specifically, with regards to the [p. 5] defendant in this case, what did you find?

A Well, the defendant gave a fictitious name. And when we were checking some information to see if they were wanted, we didn't get anything back on her.

And during my search, I found a large purse that contained three other smaller wallet-type containers. And in one of them, I found a driver's license that identified the defendant. And then also there were two other bags in there, and both of those containers contained the illegal drugs that I arrested her for.

Q Where was that purse located?

A Okay. It was on the – I believe it was on the floorboard of the car.

Q On the passenger or driver's side – or perhaps I could ask it this way. Was it at the feet of the defendant?

A To the best of my recollection, it was in the back seat, where the defendant was.

Q And the defendant was riding in the back of the car?

A Yes, I believe so.

Q And up until the time you found the identification in that purse, you didn't know the [p. 6] identity of the defendant?

A That's correct.

Q But she had given you a name that turned out to be false?

A That's correct.

Q Did the defendant ever claim that purse was hers?

A Yes. She said the purse was hers. The wallet containing her driver's license was hers. There were two separate containers, containing drugs and paraphernalia. There was one containing a syringe that had a smaller amount in it. She said that was hers. And then, there was a third container that contained more, and she said that that was not hers.

Q Did you ask the driver, Mr. Young, or any of the occupants for their consent to search the vehicle?

A No, I did not.

Q Did any of the occupants of the vehicle object to your search?

A No, they did not.

Q Was any other drug paraphernalia found in that vehicle?

A Well, there was a large quantity of, of [p. 7] chemistry lab equipment found in the trunk. And I could not link it to any direct drug activity.

Q But your search was based on Mr. Young's possession of that syringe, and his indication that he used it to consume drugs?

A That's correct.

A MR. MASTERSON: That's all the questions I have of the patrolman, thank you.

CROSS-EXAMINATION

BY MS. SHARUM:

Q Mr. Young was driving the car, correct?

A Yes.

Q And the syringe you saw was on Mr. Young's person?

A Correct.

Q And Mr. Young stated that he was the one that used drugs?

A Correct.

Q Okay. Where did you say my client was located in the car?

A She was in the back seat, I believe, on the passenger side. But I didn't put it in my report. But to the best of my knowledge, it was the passenger side.

Q Okay. Now, when you saw the – when you saw [p. 8] the syringe, you felt that gave you probable cause to search, because Mr. Young had stated he used drugs with the syringe, correct?

A Correct.

Q You at no time saw Ms. Houghton with anything that would have given you probable cause to believe that she was using drugs, correct?

A What time frame are we speaking of?

Q I'm talking about prior to the search?

A That's correct.

Q Generally speaking, men do not carry purses, correct?

A No, they don't.

Q Okay. Isn't it true that while you were searching the car, Ms. Houston asked you if you needed a warrant to do this?

A I did not speak with her until I called her over, after finding her purse. I did not speak to her personally.

Q Did you ever ask her for consent to search her items, her purse?

A No, I did not.

Q Did you ask anybody for consent to search?

A No, I did not.

Q How many people were in the car again?

[p. 9] A Three.

Q And David Young was the driver. Who was the other passenger?

A Vanessa McQueary. And Sandra Jones is the name she gave first.

Q Which you later found out was Sandra Houghton?

A Correct.

Q Were any of these other people arrested on that evening?

A No, they were not.

Q Have they been arrested on this incident?

A No, they have not.

Q Okay.

MS. SHARUM: I have no further questions at this time.

MR. MASTERSON: I have no other questions of the patrolman, Your Honor. Thank you.

THE COURT: Okay.

THE WITNESS: Thank you, Your Honor.

THE COURT: Do you have any other witnesses, Mr. Masterson?

MR. MASTERSON: No, Your Honor, I do not. Thank you.

THE COURT: Ms. Sharum?

[p. 10] MS. SHARUM: The defense could call Sandra Houghton, for the limited purpose of protecting her Forth Amendment Rights, Your Honor.

SANDRA HOUGHTON,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. SHARUM:

Q Would you state your name for the record. And spell your last name.

A Sandra K. Houghton, H-O-U-G-H-T-O-N.

Q And where do you live, Ms. Houghton?

A In Mountainview, at 545-B West First.

Q Okay. Thinking back to the evening of July 23, 1995, did you have occasion to be stopped by a patrol officer?

A Yes, I did.

Q Okay. And while that stop occurred, was there a search conducted of the car that you were in?

A Yes, there was.

Q Okay. Did you speak with the patrol officer at any time, concerning that search?

A Yes, I did.

Q What was the nature of that conversation?

A I just asked him if he wasn't supposed to [p. 11] have a warrant to search closed purses.

Q Did you ever give him a consent to search?

A No, I did not.

Q Okay.

MS. SHARUM: I have no further questions, Your Honor.

MR. MASTERSON: No questions of the defendant, Your Honor.

THE WITNESS: Could I add something? I was not sitting in the back seat. I was sitting in the front seat, next to the passenger door.

MS. SHARUM: Okay. Your Honor, I have a brief closing statement, Your Honor.

Your Honor, this officer pulled over a car for speeding and for some light violations – for some lights being out on the tail. I think the taillights were out, I believe, according to the affidavit.

That was legitimate. He saw probable cause to search Dave Young. He never had probable cause to search my client. He should have asked her for her consent to search her belongings, and he needed probable cause to search her and her items.

He had probable cause to search Dave Young, not my client, Your Honor. And I would ask that [p. 12] this be suppressed.

MR. MASTERSON: Your Honor, automobiles carry with them a profoundly reduced expectation of privacy, as recognized by the Wyoming Supreme Court and the U.S. Supreme Court.

The officer does a perfectly proper traffic stop. He gains probable cause to search that vehicle, when the driver, in plain view, has drug paraphernalia on him, which he indicates was used for the consumption of drugs. He has probable cause at that point, we believe, to search that vehicle.

And also under *California v. Aceveda* and *Florida v. Jimeno*, he has the right to search any closed containers, within that vehicle, which may reasonably contain the contraband he was looking for.

We think he had probable cause to stop. He had probable cause to search. And under the established case law, he has probable cause to search the closed containers. Thank you.

THE COURT: What are the cites in those cases, Mr. Masterson?

MR. MASTERSON: *California v. Aceveda*, Your Honor, is 111 S.Ct. 1982. It is a 1991 case. And *Florida v. Jimeno* is 111 S.Ct. 1801, also in [p. 13] 1991.

THE COURT: I'll take the motion under consideration and send a decision letter out to both sides.

MS. SHARUM: Thank you, Your Honor.

MR. MASTERSON: Thank you, Your Honor.

(Proceedings concluded at 10:19 a.m.)

[p. 14] STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

CERTIFICATE

I, Sara C. McDowell, an Official Court Reporter of the Seventh Judicial District of Wyoming, do hereby certify that the foregoing constitutes a full, true, complete, and correct transcript of the proceedings in the above-numbered and entitled cause.

Dated this 17TH day of OCTOBER, 1995.

/s/ Sara C. McDowell
Sara C. McDowell,
Official Court Reporter

ORIGINAL

The State of Wyoming
Seventh Judicial District

DAN SPANGLER, JUDGE
SARA CHARBONNEAU, REPORTER

NATRONA COUNTY
COURTHOUSE, ROOM 214
200 NORTH
CENTER STREET
CASPER, WYOMING 82601
PHONE (307) 235-9253

October 3, 1995

Mr. John A. Masterson
Asst. District Attorney
200 North Center Street
Room 300
Casper, Wyoming 82601

Ms. Monica Sharum
Asst. Public Defender
120 West First Street
Casper, Wyoming 82601

Re: State v. Sandra Houghton
Criminal Action No. 12880

DECISION LETTER

(Filed Oct. 02, 1995)

Dear Ms. Sharum and Mr. Masterson:

The above matter has come before the Court upon Defendant's motion to suppress. The officer had probable cause to search the vehicle based upon his observations and what he was told by the driver. A warrantless search of an automobile based upon probable cause does not violate the Fourth Amendment. *U.S. v. Arzaga*, 9 F.2d 95 (10th Cir. 1993). The officer was justified in searching the

purse as well. If the officer has probable cause to believe that there is contraband somewhere in the car, but does not know exactly where, he may search the entire car as well as any containers. *California v. Aceveda*, 114 L.Ed.2d 619 (1991). Thus, it was legal for the officer to search the purse and to seize the contraband.

Mr. Masterson is requested to prepare an order denying the motion for approval as to form by Ms. Sharum.

Sincerely,

/s/ Dan Spangler
Dan Spangler

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
Criminal Action No. 12880

STATE OF WYOMING)
COUNTY OF NATRONA) ss
)

THE STATE OF WYOMING,)
PLAINTIFF,)
)
VS.)
SANDRA HOUGHTON,)
)
DEFENDANT.)

MOTION TO SUPPRESS

(Filed Oct. 17, 1995)

COMES NOW, Sandra Houghton, Defendant herein, by and through his court appointed attorney, Monica Sharum, Assistant Public Defender, and respectfully moves this Court for its Order suppressing any and all statement made by the defendant on August 1, 1995.

This Motion is based on statement made on August 1, 1995 were made after Judge Dave Park sign order appointing counsel, (singed July 31, 1995), but counsel was not present for the questioning of Sandra Houghton.

DATED this 17 day of October, 1995.

/s/ Monica A. Sharum
MONICA SHARUM
Assistant Public Defender

CERTIFICATE OF SERVICE

I, Monica Sharum, counsel for the Defendant herein, does hereby certify that a true and correct copy of the foregoing MOTION TO SUPPRESS has been delivered to the attorney for the State of Wyoming by delivering the same to the office of the District Attorney this 17 day of October, 1995.

/s/ Monica A. Sharum
MONICA SHARUM

IN THE SEVENTH JUDICIAL DISTRICT COURT
FOR THE STATE OF WYOMING

STATE OF WYOMING, Plaintiff, vs. SANDRA HOUGHTON, Defendant.	)	Criminal Case No. 12880

TRANSCRIPT OF MOTIONS HEARINGS
(Filed Jun. 3, 1996)

BE IT REMEMBERED that the above-entitled matter came on before the Hon. W. Thomas Sullins District Court Judge of the Seventh Judicial District at the Natrona County Courthouse at Casper, Wyoming, on October 18, 1995 and November 1, 1995.

APPEARANCES:

For the State: MICHAEL BLONIGEN
Assistant District Attorney
Natrona County Courthouse
Casper, Wyoming 82601

For the Defendant: MONICA SHARUM
Deputy Public Defender
120 W. First, Suite 320
Casper, Wyoming 82601

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[p. 2] **OCTOBER 18, 1995**

THE COURT: State versus Houghton.

MS. SHARUM: Your Honor, I have a motion to Continue, Motion to Suppress, and a Motion in Limine.

MR. BLONIGEN: Your Honor, we would like to defer to the Motion to Continue first, Your Honor.

THE COURT: That would be fine.

Why don't you proceed in whatever order you want. Start out with the motion to continue.

MS. SHARUM: That is based on two items. At the time I filed this motion, I had not received the State Crime Lab results. I filed this yesterday at approximately 11:30. By the time I came back from lunch, I had a copy of the State Crime Lab results faxed to me.

The other basis for the Motion to Suppress is that I have not had an opportunity to inspect the physical evidence. I have called the Highway [p. 3] Patrol. I have been told that the physical evidence is not there, that it is

at the State Crime Lab and they do not know when they will have it back.

MR. BLONIGEN: Your Honor, whoever she talked to was misinformed. It has been sent back.

Secondly, Your Honor, there is an error in our traverse. They were faxed on the 17th, not the 11th.

Your Honor, all these essential items other than the controlled substance itself and syringes contained have been present at the Highway Patrol since the date of the arrest. Specifically the items Mrs. Sharum was asking me about the other day, the person, identification and items, were never sent to the Lab. The syringes containing the suspected substance were sent to the Lab.

In short, Your Honor, the items are available for review. If necessary, I will make whatever phone calls I need to for that purpose.

[p. 4] Secondly, the lab results have been obtained and forwarded. They were forwarded on a Tuesday, I believe, as soon as we had possession of that report ourselves.

As I indicated, the other items Mrs. Sharum was concerned about when she talked to me were the personal other items that would identify this person as belonging to her client and have been present the whole time, so believe that we are ready to go to trial on Monday.

I would note, Your Honor, also that her client is not here at this time. We'll discuss that prior to the other motions, but in summary, we believe that there is no reason to continue this trial. Those items will be available

as the rule requires prior trial for review, and we have, in any event, obtained the lab results that she had requested.

THE COURT: The case does involve the controlled substance that was tested [p. 5] and the result were just made available within the past couple of days, is that correct?

MR. BLONIGEN: Yes, it would have been Tuesday.

MS. SHARUM: I don't know what time it was faxed but when I came back from lunch at 1:00, they were there.

THE COURT: Were the results available earlier or were they just delayed?

MR. BLONIGEN: What happened, sir, was they mailed them. It was completed the 12th, mailed to the Police Department, and it would have arrived there for reprocessing back in to evidence probably on Friday, that Friday afternoon. We looked for them and found out that they were aware of them. This went to Patrol which is not as familiar with these procedures. We specifically got ahold of the Patrol and told them to immediately bring these in and we did provide those in a very timely fashion. We called them about 11:00 and they said they were [p. 6] available and we went ahead and faxed a copy to there office on Tuesday morning.

THE COURT: I guess what I'm getting at is the delay was out of Cheyenne or wherever the testing was done?

MR. BLONIGEN: Your Honor, point in fact, very simply backlog. We sent these things in right away. That wasn't the problem. Their caseload has gone to the point out of Natrona County that a large majority percentage of all their drug cases are out of this County. I had seven on this trial stack out of Natrona County including items sent as early as July 11th that I had to request that the results be hurried up or that they be given a new priority. That is the nature of the backlog that we see at this time.

THE COURT: Miss Sharum, a question I would have for you. Had you made a request for an actual look at the other physical evidence or whatever the Highway Patrol had in its possession [p. 7] earlier?

MS. SHARUM: I made the initial request, I called the Highway Patrol initially on Tuesday to find out that they were not there and had they been there, I would have seen them Tuesday. I asked them when they would have it back. Perhaps there was a miscommunication. My indication was that they had nothing there, that everything was in the State Crime Lab. Perhaps there is a miscommunication between them and the Highway Patrol, but my understanding was that there would not be anything there until approximately Monday.

MR. BLONIGEN: That would surprise me, Your Honor, because they usually mail the report back with the items, and if you look at the top, it was delivered certified mail and everything, they returned the items as soon as possible. I asked the gentleman, Mr. Angelos, have you sent these items back and he said, yes, I send them back

with my report. So it appears that they should [p. 8] be back.

I can contact the Highway Patrol. The difficulty that sometimes arises, each of the officers out there is responsibile for maintaining their own evidence, and so it is not uncommon for other individuals there not to be fully aware of what is going on. I can call Sergeant Martin as soon as I get done here, as far as that goes, to have those items made available.

In any event, Your Honor, as I say, the items, I first had a request from Miss Sharum to look at the items, I think, Monday afternoon and had told her that the items, the purse and things were here, but the drugs were probably in Cheyenne, and that is when we found out that they had been shipped out. Those items, other than the syringes and the suspected methamphetamine have been here since the date of arrest on July 23.

THE COURT: Okay, thank you.

I'm going to rule that a [p. 9] continuance can be granted in this case. I think there has been some communication and miscommunication. The bottom line is see that we have a serious criminal offense scheduled to go to trial on Monday and that the time frame within which the results have been made available and the time remaining to work out these other problems is very short and I would hope that we can avoid this in the future, but I know that very often with the caseloads both sides are carrying, you are going to be looking at a very similar type situation; but I would hope that the results could be made available at an earlier date. All things considered, I am willing to grant the continuance on to the next stack.

MS. SHARUM: Thank you, Your Honor.

MR. BLONIGEN: Your Honor, if I may then, prior to the Court's ruling, I think previously that you made granting the continuance, I think this is [p. 10] particularly appropriate. We were notified this morning and served at approximately 10:30 this morning with a motion to suppress the statements. Rule 45 provides that motions, unless otherwise directed, should be served on the party at least five days prior to hearing, not five hours.

Secondly, I believe that Miss Sharum's client is not here today. That always gives me concern in any kind of motion, but a suppression motion particularly. That is a very crucial motion and I don't think it would be appropriate, Your Honor. I think this Court should reschedule this. We have some – we are researching the problem ourselves, but given the – the Defendant has no phone so short notice is difficult.

We believe we don't have the five day notice. The Court has already continued the case. In light of that, I think we should reschedule this suppression motion until she is [p. 11] present.

MS. SHARUM: We have no objection to that, Your Honor. I agree on short notice and since we do have the time. Miss Sharum, I also think that as a condition of whatever bond may be involved here, your client should appear in all proceedings unless excused or unless we are talking about a purely administrative, administerial type hearing before the Court. Without a telephone, I don't know how you would do any better than you did.

MS. SHARUM: I did try to contact both of her sisters and was unable to reach either one of them. Apparently both of her sisters' phones had been disconnected, which was always my best way of getting in contact with her on short notice.

I want my clients here for all proceedings and I try to make them be here even for administrative meetings.

THE COURT: Well, I think we have an understanding.

[p. 12] The motion to suppress should be rescheduled and perhaps the Court can make a note that we'll need to put that on the calendar for a hearing.

THE COURT: Okay.

Anything else on the Houghton case?

MR. BLONIGEN: I don't believe so, Your Honor.

I take it this will be set over to the trial stack on November 6, is that correct? That is the next trial stack.

THE COURT: I believe that is correct. Is that okay, Mrs. Sharum?

MS. SHARUM: That is acceptable.

THE COURT: I would ask you, Miss Sharum, to prepare an order reflecting that your motion for a continuance was granted and present that to me.

MS. SHARUM: Thank you, Your Honor.

(Whereupon the proceedings adjourned.)

[p. 13] **NOVEMBER 1, 1995**

THE COURT: State versus Sandra Houghton, criminal action number 12880.

This has been set for suppression hearing, is that correct Miss Sharum?

MS. SHARUM: Yes, Your Honor.

THE COURT: With respect to the suppression matter itself, either party desire any opening statements?

MR. BLONIGEN: Your Honor, I believe that the burden false largely upon the State in these cases given that we must show an appropriate and voluntary waiver. I think you will find, Your Honor, as you go through this that the parties really stipulate to many of the basic facts. There are some disputes, but the basics are not really in doubt.

I think the timeline is important, Your Honor. On July 23, 1995, Miss Houghton was arrested, charged with felon in possession of methamphetamine. She made some statements prior to her arrest. Those [p. 14] are not in issue here, but she was never further interviewed, nor was there any implication of a right to remain silent, or a right to counsel.

On July 24, 1995, the Defendant appeared in County Court on an initial appearance. The Court asked her if she wanted a pauperis, to apply for counsel and she said that she did. For purposes of this hearing, Your Honor, we are going to agree that that would constitute a request for counsel. I am not sure it really did, but for purposes of this hearing, the State is not contesting that.

On July 26, 1995, the parties stipulate, Miss Houghton, who remained incarcerated, made a request which is contained in a document we have subpoened from the Natrona County Jail records indicating that for the past two days she had been attempting to talk to Sergeant Bergen of the Police Department without success and would again like to see him. That is [p. 15] approximately two days after this initial appearance and refers to previous requests during that period of time.

On July 31, 1995, the Defendant appeared for preliminary hearing. She was informed counsel had been appointed from the Public Defender's Office and that her pauperis had been approved that day, that is July 31, 1995.

On July 31, 1995, the Defendant also requested a bond reduction in a pro se capacity. That Motion was denied.

On August 1, 1995 – and I believe the evidence will show and I do not know if the parties will stipulate – DCI interviewed Miss Houghton. As you'll hear Agent Peters testify, the main concern at that time was not an interview about the offense she had been arrested for the day before but an attempt to gain information and knowledge concerning a confederate of hers who had been riding in the same [p. 16] vehicle as hers during the arrest.

During that interview, the Court will learn that she discussed her drug involvement on a wide-ranging basis.

At one point she did mention the offense for which she had been arrested, admitting ownership of the drugs.

At the end of that statement, they began to question her about involvement with David Young and other activities. She invoked her right to remain silent at that time, stating she no longer wished to talk to them.

Shortly thereafter, we are unsure of the exact date, but Officer Bergen will testify that in response to her request, he did go talk to her and she again stated an interest in talking to law enforcement officials about drug involvement and possibly working off her charges.

Upon learning that she had talked to DCI and had invoked, he ceased questioning her and told her that she [p. 17] must initiate contact with law enforcement, and several times she did on her own attempt to contact them and talk to them, as Officer Peters will testify to.

You'll find a remarkably large amount of these facts are agreed on. What is unagreed to is the effect that the law has on this situation.

There are a number of cases that we'll go through, Your Honor, but as I read these cases and I read *Michigan v. Harvey*, a 1990 case involving these questions, a comment by the majority opinion of the United States Supreme Court seemed particularly apt to our case where the Court stated, "although a Defendant may sometimes redeem his decision to speak with police, the Sixth Amendment does not disable a criminal defendant from exercising his free will."

Your Honor, I think you will find in this case that we have a situation here where the Defendant did request [p. 18] the assistance of counsel under the Sixth Amendment and I think this Court should be aware of a number of

cases which I will be citing and referring to in these arguments. The first is *Michigan v. Jackson*, a 1986 case, 89 L.Ed.2d 63. I believe that is what we have here, Your Honor.

If the Court desires Lawyers Edition or U.S. cites, I can give those.

In a 5-4 opinion, the Court held that the Michigan defendant who had been arrested and requested counsel at Arraignment could not later be interviewed by police after counsel had been appointed simply because he waived Miranda, holding that once a Defendant has requested counsel at an arraignment, further interrogation is barred under *Miranda* pursuant to the *Edward's* decision. The Court may recall in *Edwards*, the Court said that if you invoke your right to counsel, further reinitiated contact with police [p. 19] must be by the Defendant, that if the police reinitiate contact with the Defendant, it is then suppressible even though there might be a voluntary waiver of *Miranda*. So the holding in *Edwards*, *Edwards* and the other courts made clear the purpose of the *Edwards* rule, and that is that the *Edwards* rule is invoked to avoid defendants being badgered by the police in to confessions. The *Edwards* rule prevented them from going back to attempt to get *Miranda* waived after they had already invoked their right to counsel.

I think the purpose of that rule is going to be very important, Your Honor, as we discuss this case here today. Your Honor, what you'll see here Defendant who was badgered by police but a Defendant who consistently attempted to contact the police and speak to them.

There are several other cases, Your Honor, I think, that will be important [p. 20] as the Court reviews this. *Patterson v. Illinois*, a 1988 case, 101 L.Ed.2d, 261. In *Patterson*, Patterson had been arrested and charged with murder. His right to counsel has attached under the Sixth Amendment pursuant to Illinois authority. Patterson, unlike Jackson, did not invoke his right to counsel at arraignment. The court held that since Patterson had not specifically asked for an attorney, that a Miranda waiver was sufficient for several reasons. one, it held that recontact with Patterson was not barred since Patterson had not invoked his right to counsel at arraignment; two, they held that a waiver of Miranda is sufficient to waive the Sixth Amendment counsel right. That would be important here, Your Honor, particularly in the sense that a Miranda waiver was obtained and would be appropriate to weigh the Sixth Amendment rights.

In *Michigan v. Harvey*, a 1990 case 108 L.Ed.2d 293, the Court held that [p. 21] what is required is the existence of the Sixth Amendment right, and that it must be asserted. That follows from *Patterson* that you must not only have the right, you must assert the right. A somewhat important distinction, Your Honor, since the Court held that you have the right whether you assert it or not. Regardless of that, the courts have held that it must be asserted.

In *Michigan v. Harvey*, the court held that even the statements were improperly obtained after the right to counsel.

Under *Michigan v. Jackson*, they will be admissible to impeach the defendant should the defendant testify.

Finally, Your Honor, in 1991, *McNeil v. Wisconsin* was decided, 115 L.Ed.2d 158. McNeil was charged with armed robbery and arrested on a warrant for armed robbery. He requested counsel and requested to remain silent. Thereafter, police officers from another jurisdiction interviewed him [p. 22] concerning another case, a murder and robbery in another jurisdiction. Justice Scalia, in a 6-3 majority ruled that an invocation of right to counsel at arraignment was not an indication of right to counsel for all cases on a Fifth Amendment purpose. They stated that the statements were admissible in the murder-robbery case in this second jurisdiction.

Your Honor, in this case we think this is important because you will find that when the officers went in to interview her, they did not go to interview her about their existing case but about another case which might be related to that.

It is important to note that in *McNeil v. Wisconsin*, Justice Scalia states that the Sixth Amendment is offense specific, that an invocation of the right to counsel under the Sixth Amendment is offense specific. The offense that we think the evidence will show that they went to talk to her [p. 23] about this date involved her other dealings with David Young, not this particular offense, although it did come up in passing, Your Honor.

There is one Wyoming case that bears a similarity to this case, Your Honor, and that is Wells v. State, 846 P.2d 589, a 1992 case.

Prior to beginning evidence, I think this Court should perhaps have the facts of Wells in mind.

Mr. Wells was arrested on drug charges on a warrant that was issued. He was down in the State of Colorado and did not initially waive extradition as I understand the facts. On February 20, 1990, the Laramie County Court appointed the Public Defender's Office to represent the appellant, a situation not unlike our own. On March 27, Your Honor – or excuse me – Yes, March 27, over a month after the appointment of counsel, two agents went to Colorado to transport the appellant to Cheyenne. Undoubtedly, Your Honor, the Court held [p. 24] that he had invoked his right to counsel by having the public defenders appointed to represent him. During that point in time, he began saying some things about the case. They then, after he make some statements about starting a conversation, something to do with the case, they then "Mirandized" him. Wells stated that he felt like he felt under *Jackson*, that the Fifth Amendment waiver wasn't good enough. They had initiated or that they had talked to him after he had had counsel appointed under the Sixth Amendment. The *Wells* court held no, holding that making comments about the related matters to this case constituted a re-initiation.

In light of this, Your Honor, I think it is very important that this Court remember two things, the fact that the officers did not know that Miss Houghton had counsel appointed is irrelevant. The fact that the officers did not know that she was trying to [p. 25] speak to the police through Officer Bergen is equally irrelevant in terms of whether she re-initiated contact with the police.

Holding and citing *Edwards*, the *Wells* court said "*Edwards* focuses on the state of mind of the suspect, not on the police."

In summary, Your Honor, I think after you hear this evidence, that what you'll find is that shortly after her incarceration, the Defendant, in fact, did request counsel, but she re-initiated contact with the police. She evidently and obviously choose to have contact with the police again despite a request for counsel. Officer Bergen will testify that she wanted to speak to him about drug matters and clearing drug matters up. These officers will testify that she willingly talked to them and continued to talk to them afterward, Your Honor.

Moreover, the officers under *McNeil* did not seek to talk to her about this [p. 26] case. Those comments were simply part of an investigation of another case, and we think when this Court looks at it and looks at the totality of the circumstances, that, in fact, this is not a person under *Edwards* as it was adopted in *Jackson*, being badgered by the police, but a person who at every turn wanted to talk to the police in an attempt to save herself exposure upon a criminal case.

THE COURT: Given your authorities cited, I want to go back to what you said was, I guess, a stipulation at the outset that for the purposes of these proceedings at the time the pauper's affidavit was executed, we did have an indication to a right to counsel?

MR. BLONIGEN: For purposes of this hearing, yes, I'm going to agree to that, Your Honor, because she clearly requested counsel. Jackson uses the term "arraignment." Obviously our arraignments here don't take place until much later.

[p. 27] THE COURT: The initial appearance?

MR. BLONIGEN: The initial appearance in this case. My understanding of the situation that happened at the hearing, and it is very common in this jurisdiction, is that this Court asks the Defendant, are you going to hire your own attorney or do you feel you need the services of a Court-appointed attorney? The person then says, if they say they want Court-appointed, I need a court-appointed attorney, the Court will have them raise their hand, swear that they are telling the truth on the application, and deliver the application to the defendant. I do not think it is a clear indication, however, for purposes of this hearing, Your Honor, that we are willing to stipulate that on July 24th, that constituted her request for counsel.

I think the real question is, one, did she re-initiate contact with the police under the meaning of the case law; two, whether re-initiated or not, [p. 28] does the officer attempt to gain other information on other cases, fall under *McNeil v. Wisconsin* or are we still under *Michigan v. Jackson?*

THE COURT: I understand.

Miss Sharum.

MS. SHARUM: As counsel stated, a lot of these facts are stipulated to.

I do believe that he misspoke one point in time which is that the application for public defender was signed by Judge Park on the 31st. Counsel was appointed on the 31st; However, the preliminary was held on August 1st. That preliminary was continued to the following week because counsel that had been appointed was Nadine McLeod and she was not available. The case was then

reassigned to me that day in order to have me take the case the following week to the preliminary hearing.

As far as many of the other facts, I would stipulate to the fact that she was charged November 3rd, that she went [p. 29] to the initial appearance on the 24th and at that point asked for a pauper statement.

I do stipulate to the fact that she did ask to talk to Sergeant Bergen at that time. I do not believe she ever at any time asked to talk to the DCI, at lease prior to the DCI arriving there.

I would point out to the Court that Mr. Blonigen talks about related-unrelated matters. This is a case where the matter in which they came to talk about, David Young, is very related. This is one of the individuals who was in the car with her at the time of her arrest. I think that when we go and talk to somebody who potentially is a co-defendant, it is a very related matter to your case. I don't think that it falls outside in an unrelated matter. I would cite several cases for this Sixth Amendment right to counsel.

I think this Court first laid out [p. 30] some of the standards in the *Massiah* case, 377 US 201.

I think that this case also falls under a case called *Main v. Moulton*, 474 US 159. This is a case in which the co-defendant was listening in on the conversation. He made some statements against interest. He was doing this to the police. The police had another legitimate reason for having him do this. The other legitimate reason was that they were concerned that he may have had the desire to get rid of a potential witness, that he may have been

plotting this person's murder. They still held that it was inadmissible, the Court did, in that case.

As far as *Michigan v. Jackson,* they said the initial appearance started adversarial judicial proceedings as far as right to counsel being had.

Also another case, *Brewer v. Williams,* 430 US 387, this is the Christian burial speech. The defendant [p. 31] was being transported from one city to another facing different charges. The police officer start talking about a Christian burial, wouldn't it be nice that the girl that he was accused of murdering had a Christian burial and he proceeded to make a number of incriminating statements. They held that right to counsel had already attached, he had already asked for counsel in this case and held that his statements were inadmissible.

This is a situation where the police officers went up and talked with her after counsel had already been appointed. On a very much related matter, they may have started going up there asking about a co-defendant. But a co-defendant, I mean when you start talking about somebody like that, you are talking about your own case and the aspects and it was held that these statements are inadmissible here because counsel was not informed that she was going to be interviewed. She [p. 32] had made assertions that she could have counsel by filling out the affidavit and asking for counsel, and counsel had already been approved and appointed in this case, Your Honor.

THE COURT: What about the exhibit? I presume that you are aware of that exhibit?

MS. SHARUM: Yes.

THE COURT: Would you stipulate to its authenticity?

MS. SHARUM: Yes sir.

MR. BLONIGEN: Your Honor, we'll have two very brief witnesses.

We would first call Agent Peters.

[p. 33]

CHRIS PETERS

called as a witness on behalf of the State, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLONIGEN:

Q. Would you state your name for the record please?

A. My name is Chris Peters.

Q. Where are you assigned at this present time?

A. I am a special agent for the Division of Criminal Investigation, State of Wyoming.

Q. On August 1, 1995, did you receive a request for assistance from the Wyoming Highway Patrol?

A. Yes.

Q. What was the general nature of that request?

A. They said that they had made an arrest and had taken some substance that they believed to be a controlled substance off a person that they had arrested.

[p. 34] Q. Did they seize anything else that was of a suspicious nature other than the controlled substance itself?

A. Yes.

Q. What was that?

A. Glassware.

Q. What was interesting about this glassware to you as a drug enforcement officer?

A. It was glassware, very expensive glass ware commonly associated with the manufacture of meth-amphetamine.

Q. Did they identify that as being associated with any particular person?

A. Yes.

Q. Who was that?

A. David Young.

Q. Was anybody with David Young arrested when the glassware was found?

A. Yes.

Q. Who was that?

A. Sandra Houghton.

Q. After discussing this matter with the Highway Patrol, did you have occasion on August 1, 1995, to speak with the Defendant Sandra Houghton?

A. Yes.

[p. 35] Q. Where was that at?

A. The Casper Police Department.

Q. Was she in custody at that time?

A. Yes she was.

Q. Were you aware at that time that she had appointed counsel?

A. No.

Q. When you went and spoke to her, according to your report, you gave her her Miranda warnings and she agreed to talk to you, is that correct?

A. Yes.

Q. When she talked to you, did she express any hesitancy about talking to you?

A. No.

Q. What was the primary subject of your discussion?

A. The methamphetamine.

Q. Now when you refer to the methamphetamine, what were the primary, what was the primary goal of your interrogation of Miss Houghton at that time?

A. We wanted information about David Young.

Q. Did you talk to her about her experience and knowledge of David Young?

A. Yes.

[p. 36] Q. Did she make statements about the methamphetamine that she had in her possession when she was arrested by Officer Baldwin?

A. Yes.

Q. Were those in result of questioning or comments by her? How did that come about, if you recall?

A. Both.

Q. You did ask her some questions about it then?

A. Yes.

Q. Now at some point in time, did she invoke her right to remain silent?

A. Yes.

Q. How did that come about?

A. We were getting very pointed with our questions leading to David Young as being the original source of the methamphetamine she had.

Q. At that time did she indicate she no longer wished to speak to you at that time?

A. Yes.

Q. What did you do then?

A. Left.

Q. Did you ever initiate contact with her again?

[p. 37] A. No.

Q. Did she ever initiate contact with you?

A. Yes.

Q. How many times?

A. I can only guess.

Q. Okay, proximate?

A. Five.

Q. Did you ever interrogate her again?

A. Yes, we spoke with her.

Q. You did speak with her on some of these cases?

A. Every time she called, I talked to her.

Q. Who initiated these phone calls?

A. She did.

Q. What did she want to talk to you about?

A. She said that she wanted to get more information related to controlled substances.

Q. And she called you on approximately five more times?

A. Yes.

Q. Did you ever become aware that she was also attempting to work through Officer Bergen to make such statements?

A. Later we did, yes.

Q. How did you become aware of that?

[p. 38] A. He told us.

Q. Were you aware of her attempt to contact Officer Bergen when you spoke to her on August 1st?

A. No.

MR. BLONIGEN: That is all the questions I have, Your Honor.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MS. SHARUM:

Q. You stated that she tried to re-initiate contact with you, correct?

A. Yes.

Q. Isn't it true that she tried to initiate contact on approximately two times?

A. I can only guess. I would say that it was higher.

Q. Did you at any point in time inform counsel that she was trying to initiate contact with you?

A. I don't understand.

Q. Did you at any point in time notify the Public Defender's Office that this Defendant was [p. 39] trying to initiate contact with you?

A. No.

Q. Did you at any point in time ask the Public Defender's Office for permission to speak with Miss Houghton?

A. No.

Q. On August 1, when you went up there, did you check prior to going up there whether or not counsel had been appointed?

A. No.

Q. When you went up there, you went up there to talk to her about David Young, correct?

A. Yes.

Q. David Young was in the car with her when she was arrested, right?

A. Yes.

Q. Potentially David Young could be a co-defendant with her, correct?

A. Yes.

Q. Did you ever talk with anyone else concerning this case as far as David Young concerning her or vice versa?

A. I don't understand the question.

Q. Did you ever try to talk to David Young concerning Sandra Houghton? Because he was [p. 40] represented by counsel, did you avoid talking with him because of that?

A. No.

Q. Were you aware at any time that Officer Bergen had been requested to talk with her?

A. Yes.

Q. When did you become aware of that?

A. After we talked to her on August 1st.

Q. At any time prior to August 1st, did she initiate contact with you?

A. No.

MS. SHARUM: No further questions, Your Honor.

MR. BLONIGEN: We have nothing further for this witness, Your Honor.

THE COURT: I would ask, Mr. Peters, filed in this matter with the motion to suppress that has been brought by Miss Sharum on behalf of the client, is a second page of a document that says, "Interview S. Houghton" and it concludes with a dated August 10, and it concerns the August 1st interview, is that correct?

A. That is correct.

[p. 41] THE COURT: This is your report?

A. Yes.

THE COURT: A true and correct copy of the report?

A. Yes.

THE COURT: That is all I have.

MR. BLONIGEN: We would call Sergeant or Detective Pat Bergen.

[p. 42] PAT BERGEN

called as witness by the State, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

MR. BLONIGEN: Do you have any objection to Agent Peters being released?

MS. SHARUM: No.

Q. Would you state your name for the record, please?

A. Lieutenant Pat Bergen.

Q. Where are you employed?

A. Casper Police Department.

Q. Were you so employed the last week of July and first part of August of this year?

A. Yes sir, I was.

Q. During that time period, were you made aware that an inmate at the Natrona County Jail named Sandra Houghton, a Defendant in this case, wanted to speak with you?

A. Yes sir I was.

Q. Had you known her previously?

A. Yes sir I have.

[p. 43] Q. According to a document that has been stipulated in to evidence, she tried to get ahold of you

several times in late July. Do you recall her attempting to get ahold of you through the Jail several times?

A. Yes, several jailers did make comments to me that she was trying to reach me, to speak to me. I had messages in my box from the Sheriff's Department that Sandra Houghton had asked specifically to speak with me.

Q. You had nothing to do with the investigation of her case, did you?

A. Nothing. I had no idea why she was trying to contact me.

Q. Did you then get ahold of her?

A. Yes.

Q. Was that before or after the August 1st?

A. It was after August 1.

Q. What happened?

A. I was, I had time during the day shift. I called up the Jail, told them I would be available to speak with Miss Houghton and asked for them to produce her at the first floor at the interview rooms.

Q. Did you talk to her?

[p. 44] A. Yes I did.

Q. Did she tell you what she wanted to talk to you about?

A. Yes, it was very general and brief in the beginning, what is going on, that she was in Jail, what was

happening, involvement with Mr. Young, and how things were going in her life. She wanted to talk a little bit and I asked who had arrested her and she mentioned DCI had and I said, well, that is who you are going to have to talk to and deal with, and during that conversation, she said, well, I invoked my rights with them and didn't want to speak to them any more and they quit talking to me.

Q. But she had wanted to talk to you?

A. Yes.

Q. What did you do at that point since she said that?

A. I stopped talking because from experience that if she has invoked, then I can't speak to her or take any information that she may give me any further.

Q. Did she indicate to you a readiness and willingness to talk about her involvement and knowledge of drug activities in the Casper area?

A. Yes she did.

[p. 45] Q. Why would she do that?

A. She wanted out of Jail was her primary concern. She wanted to give information assisting us in any way possible that may assist her in leniency or attempting to get out of Jail.

MR. BLONIGEN: That is all the questions I have, Your Honor.

CROSS EXAMINATION

BY MS. SHARUM:

Q. How long have you known Miss Houghton?

A. I can't tell you the years, Ma'am. I don't know for sure where I first met her or how long it has been.

Q. You would say well over a year?

A. At least that and her family and associates, yes.

Q. And you knew her sister several years ago, a while back?

A. I believe so. That is how our first conversation started, with a family member.

Q. Her sister, you testified at her trial in Douglas, correct?

[p. 46] A. Which sister? You'll have to help me here.

Q. Debbie?

A. Debbie? Yes. That is one of the sisters that I have testified against, yes.

Q. In fact, you kind of testified for her at that trial, didn't you?

A. Testified for her?

Q. Yes?

A. I know that there was a hearing where they were setting bond for a lesser amount and her dependability on where she lived and that she lived in Casper and could be brought back to Court, and I did give the information that she was a local girl, that her parents lived in

town and they set her bond at a lesser amount. It was not testifying in court other than that.

Q. Could Miss Houghton have viewed you perhaps as somebody who might be a friend to her?

A. Absolutely. That is how the conversation started. I think one of the statements was, "I need to talk to somebody."

Q. So she might have called you up there not as in an official capacity as a police officer but rather a friend, isn't that correct?

[p. 47] A. It started that way, yes Ma'am.

Q. So she did not, she was not asking for initiation of contact then with Lieutenant Bergen from the Casper Police Department but more so Mr. Bergen that she knew?

A. There is only one place that it could have led to was police involvement and with her activities in the City of Casper. It wasn't a conversation of how the children were, no Ma'am.

Q. But she started off with a friendly conversation?

A. Yes, it was very friendly, yes.

Q. About you being her friend, correct?

A. Not as a friend, just as knowing me, as having heard of me.

Q. Lieutenant Bergen, upon finding out that she had counsel and had invoked her rights, you chose not to speak with her any further, correct?

A. Yes I did.

Q. You chose not to speak with her because you knew that once she had invoked her right to counsel, you could not speak with her?

A. That anything she may say may, you know, would be inadmissible if it was necessary for court, correct.

[p. 48] Q. Knowing that, you chose to leave the interview room, correct?

A. Yes. What I did was I left to confirm what she was telling and that is when I called in to the DCI.

Q. You could have also called the Court on the fifth floor and found out whether counsel had been appointed, could you not?

A. Yes, I suppose, yes.

MS. SHARUM: I have no further questions.

REDIRECT EXAMINATION

BY MR. BLONIGEN:

Q. Officer Bergen, how well do you know the Defendant?

A. I never had any court cases against her. Any previous conversation, unless it was by phone, any personal one on one, I cannot recall.

Q. She came to you because you were a police officer who she knew of, is that correct?

A. In generalities, yes sir.

Q. Did she discuss anything other than law enforcement related matters? You said the [p. 49] conversation was friendly and I understand that. When you mean friendly, was the topic still drugs and what was going on with drugs?

A. How her life was going on the street, problems she was in, Mr. Young, how she needed to get out. It was all street level, that type of information and assistance that she needed.

Q. She knew you were a police officer?

A. Absolutely. I was in uniform.

Q. She referred to you in her request as Sergeant Bergen?

A. Sergeant Bergen, yes.

MR. BLONIGEN: That is all the questions I have.

THE COURT: Any recross?

MS. SHARUM: No recross, Your Honor.

THE COURT: You may step down, sir.

MR. BLONIGEN: We have no other witnesses, Your Honor.

MS. SHARUM: We have only argument, Your Honor.

THE COURT: Okay.

MR. BLONIGEN: Your Honor, I would like to bring the Court back initially to this initiation point and I

would like to [p. 50] quote from *Michigan v. Harvey.* Your Honor, the exclusionary rule is not Constitutional in nature. It is enacted to protect people from police misconduct, and if there is misconduct in this case, I can't identify it. We have officers who, acting on their best information, went and talked to an individual who freely talked to them. It is undisputed they did not know she had appointed counsel. This is not some litmus test of what counsel thinks or what counsel would do. It is rather as they said in *Wells v. State,* a question of the state of mind of the Defendant.

Now if you read all these cases that they cited, they all cited *Michigan v. Jackson* that reached the decision it did for one reason and that was that they didn't want, just as in *Edwards,* people badgered in to waiving their rights when they had already invoked their right to counsel.

What they said in that regard is [p. 51] crucial, Your Honor, in their observation of *Edwards.*

In *Michigan v. Harvey* the Court stated, "Edward thus established another prophylactic rule designed to prevent police from badgering a defendant into waiving his previously asserted Miranda rights." They go on to say though, that if that individual, just as in *Edwards,* re-initiates contact with the police, indicating that they desire – you have to remember, what they say with *Edwards,* when somebody invokes, as under *Edwards* they say that the person has made a decision to deal with the police only with the assistance of counsel; However, if that person re-initiates contact with the police, that overcomes that presumption and shows that they do wish to

deal with the police despite that and they can waive their right to counsel.

One thing that they specifically rejected in the *McNeil* case was the [p. 52] idea that to competently waive your Fifth or Sixth Amendment rights that you need to have a lawyer to help you do it. As they stated, a person might later regret their decision, but as long as it is an exercise in free will, they can choose to talk to them, and if they re-initiate and then a valid Miranda warning is obtained after that point in time, their statements are admissible.

In *Bradshaw, Oregon v. Bradshaw* cited in the *Wells* case – it is one of the first cases to come out of the United States Supreme Court after the *Edwards* decision – Bradshaw initiated or claimed his rights. Shortly thereafter he made a statement to the police, "What is going to happen to me now?" The Court held that that was a re-initiation that allowed the police to obtain a waiver and to interrogate him.

Other similar types of comments have also been held to be a [p. 53] re-initiation.

In the *Fields* case they held that it was a re-initiation because he requested a polygraph from the police. Now in this *Wells* case, what happens is he begins talking on their way up stating things that they then re-Mirandize him and take a statement.

I think there is something important here and I believe counsel is going to point out the fact that although if you re-initiate contact with Officer Bergen, DCI didn't know about that, but, Your Honor, in *Arizona*

v. Robertson they were talking about Edwards. What happened in *Robertson* is two different sets of burglaries. Mr. Robertson invoked his Fifth Amendment rights thereafter and another set of detectives came in and thought nothing of the invocation or that other officers were involved, and got a statement. The Court held under *Edwards* though, he is still in custodial interrogation, that Fifth [p. 54] Amendment assertion still applies.

They said the fact that the officers didn't know what the officer was doing was irrelevant, that it was the Defendant's rights and the Defendant's state of mind that was appropriate.

In *Michigan, Michigan v. Jackson,* again those officers didn't know that Mr. Jackson had requested counsel. The Court held it irrelevant.

What matters is what they said in *Wells. Edwards* focuses on the state of mind of the suspect, of the suspect and not the police. The fact that Officer Bergen's contact or her attempt to contact him were not known to the DCI is equally irrelevant.

What this focuses on is what that re-initiation and attempts at re-initiation tell about the defendant's state of mind. She did not wish counsel to keep her from dealing with the police with other than counsel as *Edwards* requires but rather she [p. 55] wanted to deal with the police and have the help of an attorney later when she worked out her plea agreement or whatever she was going to do.

Her state of mind, Your Honor – and when we look at that, *Edwards* is to protect her from being badgered, from

being forced in to giving a confession and repeated contact.

If there was ever a case that is leagues away from *Edwards,* it is this one. She re-initiated contact with the police on an estimated six occasions, Your Honor. Six occasions. You cannot apply these rules of law in some cold and barren atmosphere. You must look at the purpose for which they are intended. She clearly re-initiated. It doesn't have to be a re-initiation about everything in this specific case.

The point is that she chooses to deal with the police about her drug involvement even though she had requested an attorney.

Moreover, the officers didn't go [p. 56] there to interrogate her about the subject, although there were some questions asked in that matter, but about other matters, Your Honor.

So clearly we think that she re-initiated. I think that is the key point here. Did she re-initiate or not?

This isn't about what they could have done, would have done, should have done. This is about, as the Court says in *Wells,* the state of mind of the suspect, and not the police.

The Court goes on to say that it focuses on the state of mind of the suspect and not the police.

A lesser argument, Your Honor, that we would put forth is under *McNeil.* Counsel says there is a co-defendant, they are related, therefore *McNeil* doesn't apply. But in *McNeil,* Justice Scalia's opinion, joined by five other members of the Court, says that that is not the point.

Your Honor, it doesn't matter if [p. 57] they are related. He said the invocation of the Sixth Amendment is offense-specific, the offense for which it had been invoked. It was a possession of methamphetamine on July 23, 1995. The fact that the sale of that methamphetamine, conspiracy to sell the same, or past deliveries or conspiracies with David Young is not the offense that the Sixth Amendment was invoked on. It was only that possession charge that it had been invoked on.

But, Your Honor, I don't think that you need to get to the *McNeil* question if the question here is whether there was a re-initiation of police contact discussed, the general subject matter of her arrest, particularly drugs. She did that. It is in writing, Your Honor. I think I should read that for the record. And we'll also ask that this be included in the record, Your Honor, the note by Sandra Houghten: I would like to talk to Sergeant Pat [p. 58] Bergen. I have been asking for two days." She writes on. She says July 26, '95, Your Honor, but I think it was probably the 25th since the two officers both indicate that they received it on the 25th. And the response of Officer Bergen who has been notified for the third time, "When he can, he will come see you."

Five calls to DCI? A person badgered in to waiving their rights, Your Honor?

That is not what happened here. She re-initiated. She wanted to re-initiate contact with the police and that was done. The fact that she decided to do it by sending that note, by contacting Sergeant Bergen, and that another officer came and talked to her, is really irrelevant. Her

state of mind is that she wanted to re-initiate contact with the police and that is the key point here.

THE COURT: Thank you very much.

Miss Sharum.

[p. 59] MS. SHARUM: Your Honor, I don't think it is irrelevant that the fact that the DCI did not know that she had not, that she was contacting Sargeant Bergen. I think that is very relevant. It is not just her state of mind. What was the DCI doing? They went up there to talk with her about a case, about David Young they said. Well, David Young is in that car with her when they get arrested. What are they going to start talking about? They are going to start talking about that evening and find something to talk about backward or forward.

David Young is a potential co-defendant for Sandra Houghton on that night. They went up there to talk about, they say, David Young. But the fact of the matter is that if you are going to talk about David Young, you are going to end up talking about your own case.

She had made attempts to talk to Officer Bergen, not to the DCI. There [p. 60] is a difference and in some people's mind, there is a big difference. Some consider it as Casper Police and DCI. Not a very big difference.

She initiated a contact with an officer with whom she had some experience with because of her sister. She did not initiate contact with the Department of Criminal Investigation.

This is, in my opinion, very relevant that she did not initiate contact with them. They initiated contact later on, and there were statements later on that were irrelevant,

but we are talking about the contact prior to the August 1st statement.

This is the statement that is being asked to be suppressed. This is the contact that we have to look at. Was she trying to contact the DCI or was she trying to contact an officer with whom she had past experience with? It is relevant that she did not know that Officer Bergen was being contacted.

[p. 61] They went up there to investigate her co-defendant in this crime and this, I think, makes *McNeil* not relevant.

Again, I would like to point to this case, the Main case that I cited earlier, *Main v. Moulton*, 474 US 159. In that case they said that they had legitimate reasons for listening in on these conversations, very legitimate reasons, legitimate reasons not to deal with this case, and they still held it to be inadmissible because they were listening, you know, even though that they had other reasons, they still had, these were still statements against his case.

She had invoked her right to counsel when she asked for counsel and counsel had been appointed in this case and they should have notified counsel about this interrogation that was going to take place concerning this incident, and counsel should have been made available to her, made to be there and [p. 62] present at the time.

These statements are inadmissible. It is the contention of the Defendant at this time, based on the fact that he went up to talk to her about a co-defendant, that she did not re-initiate contact with DCI. If anything, she

reinitiated contact only with Officer Bergen, and she had done that because she had had past experience with him. She did not know anything about how the DCI operated. She knew about Lieutenant Bergen.

We ask that these statements be suppressed.

THE COURT: Let me ask questions of both counsel. I know it is not a Fifth Amendment question, but still, prior to her interview, she is again advised to her right to counsel at that point in time and then proceeded with the interview. We sort of have a subject advisement. Doesn't that constitute a waiver?

MR. BLONIGEN: Your Honor, if I may, I [p. 63] think that no doubt there is a waiver there; However, if she invoked her right at the initial appearance and subsequently waived that, what I think you have to look to is *Michigan v. Jackson* or *Illinois v. Patterson*. In addition, what they say in *Jackson*, what they say, and in *McNeil*, and *Patterson* and *Harvey* is that, look, we realize by making this rule, we are taking some voluntary waivers out and throwing them away.

But I think the point here, Your Honor, is one of two things. What *McNeil* says is that it has to be offense-specific. We are not going to throw that baby out with the bathwater.

Number two, in *Patterson*, the interest that he had the Jail rights of Jackson but because he didn't utter the magic words, "I want an attorney," they said that his waiver was appropriate.

But under *Patterson*, Your Honor, I would note that if she is re-initiating [p. 64] or falls under *McNeil*, a Fifth

Amendment waiver is sufficient to waive the Sixth Amendment rights, so I think, Your Honor, that I agree there is a voluntary waiver there.

I don't think this is a question of coercion. It is simply a question of extremely bad timing. The officers did not know she was represented.

I would like to address two points counsel brought up very briefly. One, she cites *Main v. Moulton*. I don't think *Main v. Moulton* is appropriate, Your Honor. In that case you have a government agent interviewing a person who has surreptitiously claimed the right to counsel on the offense in question.

Having done that, this is a totally different issue than whether there was a re-initiation and they went in there.

Secondly, the Court brings up the issue of the Miranda waiver which was clearly not contested here. Remember, if there is a re-initiation, that is [p. 65] not enough information the Court has to find first some re-initiation of the desire to contact the police and bring them back in to the situation; and secondly, even after that, there has to be a valid Miranda.

Now there was a valid Miranda here. I don't think that is really in question, but the Miranda waiver issue still does play a key part in this even though there is a re-initiation under the State's theory.

Your Honor, I think though that this still boils down to what they said in *Michigan v. Harvey*, although a Defendant may sometime later retract his decision to speak with the police, the Sixth Amendment did not disable a criminal defendant from exercising his free will. To hold

that a defendant is inherently incapable of relinquishing his right to counsel when it is invoked would be to imprison a man and his privileges and call it unconstitutional.

[p. 66] Your Honor, wise or not, the defendants have rights to make these choices.

The second point, Your Honor, is in *Michigan v. Jackson*, the Court specifically held that officers would be held to have joint knowledge over all officers or all court personnel. That is why the fact that they didn't know Mr. Jackson had invoked his right to counsel was deemed irrelevant. Well, Your Honor, that is true, but it works both ways. Similarly you look at the totality of what was going on with the officers herein and her desire to reinitiate contact with them, and they are equally charged with joint knowledge of all of those things. it works both ways, Your Honor.

THE COURT: Miss Sharum.

MS. SHARUM: Your Honor, I don't think *McNeil* applies because I think this is not a separate incident here. I think that this is the same matter that they were contacting her on. This is her [p. 67] co-defendant. In this case, when questioning somebody about their knowledge of the co-defendant, eventually it is going to come down to your case. I think that is a logical assumption. A potential co-defendant, I don't believe, has actually been indicted on this or charged at this time, to my knowledge, although I could be wrong.

MR. BLONIGEN: That is correct.

MS. SHARUM: Is that correct?

MR. BLONIGEN: Yes.

MS. SHARUM: This is a case in which she tried to contact an officer who she was aware of, who she knew, who she had had previous contact with, and not try to contact the DCI.

Again, I think that she invoked her right to counsel and that that right should still be held in this and these stateaments should be held inadmissible.

THE COURT: Okay, I'm going to take it under advisement. I would ask that the [p. 68] exhibit that we have referred to previously be marked as State's exhibit number 1 and made part of the record and I'll have the court reporter do so.

I think it is a matter that has some legal arguments that need to be looked in to and I'm going to look at the case law.

I would note that the evidence presented quite strongly indicates to me that there was an effort to re-initiate and that is the only evidence that I have before me is the two law enforcement officers. But the totality of the evidence needs to be looked at in the context of the exhibit and the chronology that has been provided. So I'll take it under advisement.

MR. BLONIGEN: Your Honor, I have a number of cases or the volumes involving the cases that we have cited. Does the Court want me to leave those with the Court?

THE COURT: Yes, if you would.

[p. 69] MS. SHARUM: I also have a number of them here if you want them.

MR. BLONIGEN: We'll deposit them in your office.

THE COURT: Leave the markers in them.

MS. SHARUM: Your Honor, if we could address one brief matter also. I have just been given notice of intention to use prior wrong act under 404(b). I have just been given notice of this. I don't have the research or researched it to any large extent; however, we object to this and would ask for an opportunity to respond to this some time prior to those arguments being admitted.

MR. BLONIGEN: Yes sir, and if I might, this is conditional, as I indicated in my documents on file. We do not intend to mention these in opening statements or use them in our case in chief. They would only become relevant if certain defenses are raised or if the Defendant should testify. It may be that they will have to wait until trial to

* * *

[p. 71] CERTIFICATE

STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

I, THOMAS G. BAILEY, RPR, Official Court Reporter in and for the Seventh Judicial District of Wyoming, do hereby certify the above and foregoing printed pages

contain a true and correct transcription of my shorthand notes taken upon the occasion set forth in the caption page hereof as reduced to print type by me.

Dated this 3rd day of June, 1996 at Casper, Wyoming.

/s/ Thomas G. Bailey
Thomas G. Bailey, RPR

IN THE SEVENTH JUDICIAL DISTRICT COURT
FOR THE STATE OF WYOMING

STATE OF WYOMING, Plaintiff, vs. SANDRA HOUGHTON, Defendant.	)	Criminal Case No. 12880

OFFICIAL COURT REPORTER'S
CERTIFICATE OF COMPLETION

(Filed Jun. 03, 1996)

BE IT REMEMBERED that the Original of the Official Court Reporter's Transcript of Proceedings in the above-entitled matter was filed with the Clerk of the District Court of the Seventh Judicial District of the State of Wyoming on June 3, 1996 and that pursuant to Rule 2.06 of the Wyoming Supreme Court Appellate Rules, effective on the 1st of November, 1992, this Certificate notices

the Clerk of the Wyoming Supreme Court and counsel (or parties) of record of that filing in the trial court; that copies of this Certificate are being mailed to the Clerk of the Wyoming Supreme Court and all counsel (or parties) legally interested in this proceeding thus transcribed and filed herein.

Dated this 3rd day of June, 1996.

/s/ Thomas G. Bailey
Thomas G. Bailey, RPR
Official Court Reporter
Seventh Judicial District
State of Wyoming

STATE OF WYOMING,)
) SS.
COUNTY OF NATRONA)

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT

Criminal No. 12880/JM-MB

STATE OF WYOMING,)
Plaintiff,)
)
vs.)
SANDRA HOUGHTON,)
)
Defendant.)

ORDER

(Filed Oct. 27, 1995)

THIS MATTER having come before the Court upon the Defendant's Motion to Suppress, and the Court having reviewed the matter finds that said Motion should be denied pursuant to the decision letter filed herein on October 2, 1995, by the Honorable Dan Spangler, Seventh Judicial District Court Judge;

NOW, THEREFORE, IT IS ORDERED that the above-stated Motion be, and the same hereby is, denied.

DONE IN OPEN COURT this 27th day of October, 1995.

BY THE COURT:

/s/ Dan Spangler
DISTRICT COURT JUDGE SPANGLER

APPROVED AS TO FORM:

/s/ Monica A. Sharum
Monica A. Sharum,
Attorney for
Defendant

/s/ Michael A. Blonigen
Michael A. Blonigen,
Assistant District
Attorney

STATE OF WYOMING
SEVENTH JUDICIAL DISTRICT
[Seal]

W. THOMAS SULLINS
DISTRICT JUDGE

THOMAS G. BAILEY
COURT REPORTER

NATRONA COUNTY
COURTHOUSE
200 NORTH CENTER
CASPER, WYOMING 82601
(307) 235-9253

November 3, 1995

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Re: State of Wyoming v. Sandra Houghton
Seventh Judicial District Court
Natrona County, Wyoming
Criminal Action No. 12880

DECISION LETTER

(Filed Nov. 3, 1995)

Dear Ms. Sharum and Mr. Blonigen:

The referenced case has come before the Court for consideration of the Defendant's Motion to Suppress filed October 17, 1995. Based upon the totality of the evidence presented at the hearing on the Motion to Suppress, the

Court rules that the request for the suppression of the August 1, 1995 statement given by Defendant to drug enforcement officer Chris Peters should be denied.

The defense is correct in asserting that under the Sixth and Fourteenth Amendments to the Constitution of the United States and Article 1, Section 10 of the Constitution of the State of Wyoming, the police have an affirmative obligation not to act in a manner that circumvents and thereby dilutes the protection afforded by the right to counsel. *Main v. Moulton*, 474 U.S. 159, 88 L.Ed.2d 481, 106 S.Ct. 477 (1985). In this case, however, it was clearly established by competent evidence that before and after the appointment of legal counsel the Defendant made several express requests to communicate with law enforcement officers; that the Defendant's communication with special agent Chris Peters on August 1, 1995, was to talk generally about methamphetamines and drug trafficking; that the Defendant knowingly and intelligently chose to communicate with the drug enforcement officer in the absence of her attorney; that there were no improprieties whatsoever on the part of the law enforcement officers involved in this matter; and that the Defendant knowingly and intelligently waived her right against self incrimination prior to making the statement of concern to this suppression motion. *McNeil v. Wisconsin*, 501 U.S. 171, 115 L.Ed.2d 158, 111 S.Ct. 2204 (1991); *Patterson v. Illinois*, 487 U.S. 285, 101 L.Ed.2d 261, 108 S.Ct. 2389 (1988); *Michigan v. Jackson*, 475 U.S. 625, 89 L.Ed.2d 631, 106 S.Ct. 1404 (1986); and *Wells v. State*, 846 P.2d 589 (Wyo. 1992).

The United States Supreme Court in the case of *Michigan v. Harvey*, 494 U.S. 344, 108 L.Ed.2d 293, 110 S.Ct.

1176 (1990), noted that nothing in the Sixth Amendment prevents a suspect charged with a crime and represented by counsel from voluntarily choosing, on his own, to speak with police in the absence of an attorney, and that although a defendant may sometimes later regret his decision to speak with the police, the Sixth Amendment does not disable a criminal defendant from exercising his free will. It is this Court's opinion that such pronouncement has direct application to this matter.

In accord with the foregoing discussion, the Motion to Suppress of the Defendant is hereby denied, and Mr. Blonigen is requested to prepare an order reflecting this ruling and submit the same to defense counsel for approval as to form.

Very truly yours,

/s/ W. Thomas Sullins
W. Thomas Sullins

WTS:bh

STATE OF WYOMING,)
) ss.
COUNTY OF NATRONA)

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
Criminal Action No. 12880

THE STATE OF WYOMING,)
Plaintiff,)
v.)
SANDRA HOUGHTON,)
Defendant.)

COURT REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME I (I OF II)

(FILED MAY 20, 1996)

BE IT REMEMBERED that the above-entitled matter came before the HONORABLE DAN SPANGLER, a Judge of the Seventh Judicial District of Wyoming, in the District Courtroom, Natrona County Courthouse, Casper, Natrona County, Wyoming.

PROCEEDINGS:

JURY TRIAL: November 6 and 7, 1995.

PROCEEDINGS REPORTED BY:

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Official Court Reporter
Natrona County Courthouse
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[p. 2] APPEARANCES

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Description of Exhibit	Identified	Offered	Admitted
State's No. 1 – Manila envelope containing black bag and brown bag	73&74	(Not offered or admitted)	
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State's No. 3 – Wyoming State Crime Lab Identification Report	113	114	114

DEFENDANT'S EXHIBITS

(No Defendant's exhibits were introduced in this case.)

[p. 7] MONDAY, NOVEMBER 6, 1995,
MORNING SESSION, 9:00 a.m.

PROCEEDINGS

THE COURT: The Court will come to order. Ladies and gentlemen, you don't all have to sit on that side. Some of you can move over here, if you want a little more room there.

Would you please call the role of the jurors, Ms. Volin. And please answer as your names are called.

(The clerk called the role of the jurors.)

THE COURT: Ms. Volin, would you please swear the panel to answer the questions concerning their qualifications to serve as jurors.

THE CLERK: Yes, Your Honor.

(The clerk swears the jurors concerning their qualifications.)

THE COURT: Please be seated. Ladies and gentlemen, there are certain qualifications you must meet to serve as a juror in this state. Those requirements are that you be a citizen of the United States, over the age of 17, a resident of the state of Wyoming and County of Natrona for at least 90 days before being selected as a juror; that you be in possession of your natural faculties, of ordinary intelligence, and without mental or physical [p. 8] infirmity preventing satisfactory jury service; that you have a sufficient knowledge of the English language and you not be previously convicted of a felony.

Is there anyone who believes that he or she does not meet those qualifications? It appears that all the jurors are qualified.

Would you please swear is jurors to serve this term, Ms. Volin.

MS. VOLIN: Yes, Your Honor.

(The jurors are again sworn.)

THE COURT: Please be seated. Since I assume this is the first time on jury service for many of you, let me explain to you just a few of the procedures here, to make your stay a little more comfortable.

Generally, these cases start either at 9 o'clock or 10 o'clock in the morning. So when the clerk's office calls you and asks you to serve on a case, please try to note whether your case begins at 9 o'clock or 10 o'clock.

The duration of your term of service is six months. On my cases, I like to start at 9 o'clock in the morning and then take a recess in the middle of the morning, and then another recess from about [p. 9] 12 o'clock until 1:30, recess in the middle of the afternoon and adjourn for the day at 5 o'clock.

During these recesses, you will want to know where the restrooms are located in this building. There is a men's room at this end of the hall, if you turn right; and the ladies' room is at the other end of the hall, if you turn left. There are also restrooms on the next floor up above this one and in the basement of this building.

You can be excused for overtime parking while you are serving on a jury. If you receive a ticket for overtime parking, bring that to the clerk of the court's office or to the person who is serving as bailiff on your case, and they can have you sign a form to be excused for that.

However, that only protects you if you are in a legal parking space. It doesn't save you if you're next to a fire hydrant or somebody's driveway or someplace like that.

You're entitled to be paid for your service here as jurors. The legislature has set a rate of $30 a day, plus mileage, if you come from more than five miles away. You're entitled to be paid each time you come here for a case, or you can just let your account accumulate and

receive one check at the [p. 10] end of your six months of service.

Naturally, it's easier for the clerk of the court's office if you come in for one check at the end of six months, but if you want, you're entitled to be paid every time you come here.

If you have any personal emergencies or other problems which develop after you've been called to serve on a case here, just contact the clerk of court's office, and they will try to work that out with you.

If you have any problems that arise during a trial, bring that to the attention of the bailiff. It is a great help to the clerk of the court's office if you can keep them advised of your current telephone number where you can be reached, not only so that they can ask you to be here for these cases, but so they can contact you later on in the event a case is postponed for some reason.

Ladies and gentlemen, we'll now select the jury which will try the case before us today, which is the case of the State of Wyoming, plaintiff, versus Sandra Houghton, defendant, Criminal Action No. 12880.

This case was commenced by the filing of a charge or Information by the State which alleges [p. 11] generally, that on or about the 23rd of July, 1995, in Natrona County, Wyoming, the defendant did unlawfully possess a controlled substance, methamphetamine, in a liquid amount greater than three tenths of a gram.

This Information or charge is not evidence and affords no inference of guilt. The defendant has entered a plea of not guilty. Thus, the State has the burden of proof

to establish the defendant's guilt beyond a reasonable doubt. The defendant is presumed to be innocent.

Representing the State in this case is Mr. Mike Blonigen, who is seated at the first table on my right. Representing the defendant is Ms. Monica Sharum, who is seated at the next table. The bailiff is Ms. Wanda Davis. The court reporter is Ms. Sara McDowell, and the deputy clerk of the court is Ms. Anne Volin.

Ms. Volin, would you please swear the jurors in connection with any questions concerning their competency to serve as juror in this case.

(The potential jurors are sworn as to competency.)

Ms. Volin, would you please draw 12 names to form a jury. And as your names are called, please [p. 12] have a seat up here in the jury box, beginning with the two seats from in the top row and then filling up each row from left to right as you face the jury box.

THE CLERK: No. 362, Steve Sword.

THE COURT: Would you move down just one seat, Mr. Sword. Thank you.

THE CLERK: No. 369, Heather Taylor. No. 348, Cleora Sorenson.

THE COURT: Just down at this end please, thank you.

THE CLERK: No. 383, John Vernon.
No. 331, Helen Scott.
No. 259, Michael McLellan.
No. 170, Alice Hodges.
No. 342, Tonia Simmons.

No. 208, Debra Kennedy.
No. 154, Donna Hamilton.
No. 41, Marcia Brock.
No. 266, Becky Meyer.

That's 12 names, Your Honor.

THE COURT: Thank you. Is there anyone here for jury service that was not present when we called the role of the jurors? Okay, thank you.

THE BAILIFF: This lady here was not –

[p. 13] THE COURT: Oh, you were not here for the role call?

(The potential juror shook her head.)

THE COURT: All right. Were you here for the matter of qualifications of jurors?

(The potential juror shook her head.)

THE COURT: Swear her to answer those questions then, please.

(The potential juror is sworn to answer truthfully as to qualifications.)

THE COURT: There are certain qualifications you must meet to serve as a juror in Wyoming. Those are that you be a citizen of the United States, over the age of 17, a resident of the state of Wyoming and the county of Natrona for at least 90 days before you were selected as a juror; that you be in possession of your natural faculties, of ordinary intelligence, without mental or physical infirmity preventing satisfactory jury service; that you have a sufficient knowledge of the English language, and that

you have not previously been convicted of a felony. Do you meet those qualifications?

MS. KENNEDY: Yes, I do.

THE COURT: Would you swear her to serve this term, Mrs. Volin.

[p. 14] THE CLERK: Yes, Your Honor.

(The potential juror is sworn.)

THE COURT: Were you here for the other oaths to answer the questions for jurors in this case.

MS. KENNEDY: No.

(The potential juror is again sworn.)

THE COURT: Mr. Blonigen, do you wish to question the jurors?

MR. BLONIGEN: Thank you, Your Honor. My questions will be very short today. I've been on jury duty before, and ever since that, I decided that fewer questions is probably better than a lot of questions. But there are some questions I would like to ask you today.

You are probably the first jury who will sit in this state on some new drug laws, which were put into effect on July 1st. There was a lot of news coverage of those. I don't know if any of you recall that, but I am going to be asking you some questions about your feelings about drug laws and about people who may use drugs.

And if any of these reach a personal level, where you feel you would be more comfortable talking with the judge up at the bench, that's fine.

[p. 15] Otherwise, I will have just a few questions outside of that.

The defendant in this case is charged with possession of methamphetamine, sometimes called on the street "crank." Have any of you read any articles in the Casper paper in the last year talking about methamphetamine or crank in Casper?

Okay. There has been some articles on that. Do any of you believe that the state should decriminalize the use of drugs? Legalize the use of drugs?

Do any of you feel that we spend too much time, too much money or effort enforcing drug laws?

This case will involve an allegation that involves a drug in its liquid form; that is, in injectable form.

Does the fact that this drug involves the use of intravenous tools, syringes, things like that, bother any of you to the extent that it might bother you considering the case?

Have any of you had a personal experience either on your own, perhaps a loved one, who had a problem with methamphetamine, to the degree that you think it might affect your ability to sit fairly in this case?

[p. 16] Have any of you had any experience – let me ask you this; do any of you have close friends or relatives that have used the drug methamphetamine that you know of?

Mr. Vernon, I am going to pick on you a little bit because I recognize you, and that's the way it goes, right? Certainly, you have seen this problem in the community?

MR. VERNON: Yes, I have.

MR. BLONIGEN: Based on your experience in the counseling area, do you feel that that will affect your ability to consider this case fairly?

MR. VERNON: No, I don't.

MR. BLONIGEN: I take it you have had some exposure to methamphetamine over the years in your occupation.

MR. VERNON: Yes.

MR. BLONIGEN: Do you know the defendant in the case, Sandra Houghton?

MR. VERNON: Not that I know of.

MR. BLONIGEN: Do you know Ms. Sharum, her attorney?

MR. VERNON: No.

MR. BLONIGEN: Do any of you know Ms. Sharum or the defendant, Ms. Houghton?

[p. 17] Do any of you know Officer Baldwin here with me today? He was the arresting officer on this.

MS. KENNEDY: Yes.

MR. BLONIGEN: All right. Is there anything about that knowledge of him that would affect your ability to sit fairly in this case?

MS. KENNEDY: No, we go to church together.

MR. BLONIGEN: Okay. Anybody else know Officer Baldwin? There might be another highway patrolman testify, a Mr. Mizell. Do any of you know him?

Chris Peters, he's with the DCI, Central Drug Enforcement Task Force Team here, he's from Douglas actually. Do any of you know Chris?

And the other witness will be a chemist from the state lab, George Angelo. Do any of you know him?

Now, have all of you heard the phrase that you're entitled to be proven guilty beyond a reasonable doubt? Is there anybody here that disagrees with that?

Is there anybody here who cannot find somebody guilty, if they were shown to be guilty beyond a reasonable doubt?

Does anybody have a moral or personal [p. 18] problem with passing judgment on other people? Because that's what a juror is asked to do. It's asked to find certain facts to be true or not true, and that sometimes bothers people. Does anybody feel like that on this panel? Yes, sir.

MR. SWORD: I do.

MR. BLONIGEN: It's troublesome to sit there and say – and make a decision about somebody else's life.

MR. SWORD: Right.

MR. BLONIGEN: I believe I saw that you have been on jury duty before?

MR. SWORD: Two times.

MR. BLONIGEN: Was that here in Casper?

MR. SWORD: Yes.

MR. BLONIGEN: What kind of cases were they?

MR. SWORD: I was called for a drug case - not a drug case, but a drinking case. I was not called.

MR. BLONIGEN: Did you actually serve then?

MR. SWORD: No.

MR. BLONIGEN: Do you think there's anything about that - I mean it is not a pleasant duty, certainly, to sit on cases like this. But is it something that would make you unable to reach a [p. 19] conclusion based solely on the evidence, because you are reluctant to pass a verdict?

MR. SWORD: No.

MR. BLONIGEN: Have you had exposure to the people you work with or anything like that involving these kinds of drugs?

MR. SWORD: I've had exposure with people that do drugs, yes.

MR. BLONIGEN: Okay. Anything about that that would lead you to be biased one way or the other in this case?

MR. SWORD: Yes.

MR. BLONIGEN: Okay. So do you think it would affect your ability to sit as a fair juror?

MR. SWORD: No.

MR. BLONIGEN: If I could ask you, what generally is that bias you think you have?

MR. SWORD: I am an electrician, and we have drug testing when we go from different company to different company. And the people that I know that do

drugs are able to go to work, and they somehow or other get past the drug test.

MR. BLONIGEN: It gives you concerns about your safety sometimes?

MR. SWORD: Yes, it does.

[p. 20] MR. BLONIGEN: Anything about that that will affect the way you look at this defendant, who is charged with possession of drugs?

MR. SWORD: No.

MR. BLONIGEN: I have a question for all of you, and that is if we are charging somebody with possession, to show somebody possesses a drug, you don't have to show they own it, simply that they possess it. Do any of you feel that simple possession of drugs should not be against the law?

Do you all agree that anybody charged with a crime – I mean anybody, no matter what the state of the evidence is against them – is entitled to their day in court, a fair trial? Anybody have any problem with that?

There has been some talk in recent years that jurors should be able to ignore the law, if they don't feel that it should be applied in a certain case. Do any of you feel you should be free as a juror to ignore what the judge tells you the law is, if you don't like the result in a certain case?

Do any of you feel you should be able to overrule the law and say, well, that's what the law says, but I am not going to apply it in this [p. 21] situation?

Can any of you think of any reason that I might ask about, why any of you couldn't be a fair juror in this case? Any reason at all that maybe something I haven't asked, that maybe you think you shouldn't be sitting on this kind of case? Anything at all from any of you?

That's all the questions I have, Your Honor.

THE COURT: Ms. Sharum.

MS. SHARUM: Hi. My name is Monica Sharum, and I am the counsel for the defendant here today. I am going to be a little bit nervous. And the defendant here, she's depending on me, and I may stammer a little bit and stutter. But that shouldn't make any of you think any less of my client. It's not going to bother any of you if I get nervous and I shake?

I want to talk to a couple of you. Mr. Vernon, is that how you pronounce your last name? My last name starts with an S too, and everybody messes it up. Mr. Blonigen indicated that you knew him?

MR. VERNON: Yes, I do.

MS. SHARUM: How do you know him?

[p. 22] MR. VERNON: Just at times he – the program that I work for – I work for Mercer House. And we've just had dealings with the district attorney's office. Mr. Blonigen has been active in the United Way. We're a United Way agency, and we have what I think of as a sort of nodding acquaintance.

MS. SHARUM: A trial is kind of like a race. I mean, we all have to start at the same starting gate, and nobody can start just a little bit ahead of anybody else.

Do you think the fact that you know him might let you – like, give him just a little bit more credibility because you know him and you have met him before?

MR. VERNON: I don't believe I would give him more credibility because of that.

MS. SHARUM: Ms. Simmons, you also stated that you knew Officer Baldwin. Do you think that will affect you, the fact that you know him? Do you think you would be likely to listen to him a little more carefully or to give him more credibility?

MS. KENNEDY: I am Debra Kennedy.

MS. SHARUM: Oh, I'm sorry.

MS. KENNEDY: No, that will not affect me.

MS. SHARUM: You don't think that the fact that you've met him before, that will not have any [p. 23] effect on you at all?

MS. KENNEDY: No.

MS. SHARUM: We will have a lot of testimony here, and you will hear things said about my client. Just because somebody has done something wrong, does that mean that they've done everything wrong, that the State accuses them of? Anybody believe that?

I realize that's a confusing question. Does anybody think that if you did something wrong, you must have done everything wrong? You don't believe that? Somebody may have done part, but not all?

Mr. Blonigen talked to you a little bit about drugs. Do any of you belong to any organizations like D.A.R.E. or anything like that?

MR. MCLELLAN: I am a sixth grade teacher, so we have a D.A.R.E. officer come to our classroom once a week. And my wife is on the local D.A.R.E. board.

MS. SHARUM: Okay. Anybody here assume that just because the police arrested my client – you're involved in an organization too?

MR. VERNON: Yes, I work for Mercer House. One of our roles – and we contract with the state of Wyoming – is to do drug and alcohol education in [p. 24] the community. I am also a member of the Governor's Violent Crime and Drug Abuse Advisory Board. I don't personally believe that either of these would affect my judgment in here, but I think you should know.

MS. SHARUM: Anybody here believe my client's guilty, simply because she's been arrested?

Does everybody here understand that my client doesn't have to prove anything? Ms. Houghton doesn't have to prove anything. The burden of proof rests on the State.

You know, I don't have to bring in the surprise Perry Mason witness that's going to confess on the stand. We don't have to do that. Do you all understand that?

Does anybody believe that if I don't bring in a surprise Perry Mason witness, that my client must be guilty then? If that person doesn't show up?

No further questions, Your Honor.

THE COURT: The Court will now receive the peremptory challenges.

(Ms. Sharum presents her challenge to the Court and counsel.)

THE COURT: Would you call another juror [p. 25] please, Ms. Volin.

THE CLERK: Yes, Your Honor. Number 182, Brenda Hume.

THE COURT: Would you have a seat on this bench up here, Ms. Hume.

MR. BLONIGEN: Could you hear all the questions we were asking earlier?

MS. HUME: Yes.

MR. BLONIGEN: Because I try not to repeat all of them. Did you know any of the people we listed off here today?

MS. HUME: No.

MR. BLONIGEN: Again, the nature of this case involving methamphetamine drug use. Does that give you any concerns about the questions we've asked this morning?

MS. HUME: No.

MR. BLONIGEN: Can you think of any reason why you couldn't be a fair juror in this case?

MS. HUME: No.

MR. BLONIGEN: Have you been on jury service before?

MS. HUME: No.

MR. BLONIGEN: So this is the first time. Do you have any concerns, as we discussed with the one [p. 26] gentleman, about sitting in on this sort of situation and making an important decision like this?

MS. HUME: No.

MR. BLONIGEN: That's all the questions I have, Your Honor.

MS. SHARUM: You heard the questions I asked too. Is it going to bother you that I am nervous?

MS. HUME: No, not at all.

MS. SHARUM: Is it going to bother you if we don't – if we don't present any evidence?

MS. HUME: No.

MS. SHARUM: Would it bother you if my client doesn't testify?

MS. HUME: No.

MS. SHARUM: Would it bother anybody if my client doesn't testify? Do you have any strong feelings about drugs, or do you have any experiences with them?

MS. HUME: Never had any experience, so –

MS. SHARUM: You don't belong to any organizations or anything?

MS. HUME: No.

MS. SHARUM: You understand that my client is presumed innocent; that the burden rests on the [p. 27]

State? Do you have any problem going into this trial with that presumption?

MS. HUME: I understand that.

MS. SHARUM: Do you think that my client must be guilty because she has been arrested?

MS. HUME: No.

MS. SHARUM: If testimony or evidence was presented to suggest that my client may have done something wrong, although not necessarily everything, would you have trouble bringing back a verdict of not guilty, if they didn't show everything?

MS. HUME: No.

MS. SHARUM: No further questions.

THE COURT: Thank you. You can have a seat back out in the audience section again.

(Mr. Blonigen presents his challenge to the Court and counsel.)

(Ms. Sharum presents her challenge to the Court and counsel.)

THE COURT: Would you call another juror please, Ms. Volin.

THE CLERK: Yes, Your Honor. No. 205, Linda Keith.

MR. BLONIGEN: Ms. Keith, did you know any [p. 28] of the people we listed off here this morning?

MS. KEITH: No.

MR. BLONIGEN: I see you had some prior jury service a few years ago?

MS. KEITH: Yep.

MR. BLONIGEN: What kind of case was that?

MS. KEITH: One was a forgery case and one was a traffic accident type of thing.

MR. BLONIGEN: Okay. So you're very familiar about how the judge will instruct you on the law and those things?

MS. KEITH: Yes.

MR. BLONIGEN: Anything about that past experience that would make you reluctant to be a juror again?

MS. KEITH: No.

MR. BLONIGEN: Anything about your occupation – I notice you take care of your elderly parents as well?

MS. KEITH: Yes.

MR. BLONIGEN: Is that a problem if you're here – we believe that this will probably only last a day. Will that create any difficulty for you?

MS. KEITH: No.

MR. BLONIGEN: Can you think of any reason [p. 29] you wouldn't be a fair juror in this case?

MS. KEITH: No.

MR. BLONIGEN: I pass this juror.

MS. SHARUM: Now, you've heard – do you think my client has to prove her innocence to you?

MS. KEITH: No.

MS. SHARUM: You understand the burden of proof rests upon the State?

MS. KEITH: Right.

MS. SHARUM: Do you think that if my client did something wrong, that that necessarily means she did everything wrong?

MS. KEITH: No.

MS. SHARUM: Do you have a problem with if – if my client doesn't take the stand? Would that bother you?

MS. KEITH: No.

MS. SHARUM: Do you have – have you ever been involved in any organizations that have to do with drugs?

MS. KEITH: No, I haven't.

MS. SHARUM: Have you ever been active in the drug movement or anything like that?

MS. KEITH: No.

MS. SHARUM: Have you ever – been reading [p. 30] any newspaper articles about – in the Casper Star, about the question that was asked before?

MS. KEITH: Yes.

MS. SHARUM: When?

MS. KEITH: At the time that the law went into effect.

MS. SHARUM: Back in July you recall reading some articles about that?

MS. KEITH: Right.

MS. SHARUM: No further questions.

THE COURT: Thank you. You can be seated back out there again.

(Mr. Blonigen presents his challenge to the Court and counsel.)

(Ms. Sharum presents her challenge to the Court and counsel.)

THE COURT: Would you call another juror please, Ms. Volin.

THE CLERK: Yes, Your Honor. No. 191, Harold Jensen.

MR. BLONIGEN: Mr. Jensen, did you know any of the people we listed here this morning?

MR. JENSEN: No.

MR. BLONIGEN: How about the type of case this is, would that cause you any special concerns?

[p. 31] MR. JENSEN: Not particularly.

MR. BLONIGEN: Did you read the newspaper articles and things that we had earlier in the year when this law was first passed?

MR. JENSEN: I read a little about it, but I didn't pay much attention to it.

MR. BLONIGEN: All right. Have you ever been close to anybody that had a problem with a drug like this?

MR. JENSEN: No.

MR. BLONIGEN: Anything that you would think would make you an unfair juror in the case?

MR. JENSEN: I can't think of anything offhand.

MR. BLONIGEN: You haven't been on jury duty before?

MR. JENSEN: No, huh-uh.

MR. BLONIGEN: That's all the questions I have, Your Honor.

MS. SHARUM: I am going to ask you some of the same questions I have been asking everybody else.

MR. JENSEN: If you would speak up a little louder, we could hear you better.

MS. SHARUM: I'm sorry. Do you believe that [p. 32] I have to bring in a surprise witness?

MR. JENSEN: Surprise witness? No, I wouldn't say that.

MS. SHARUM: You understand that the burden of proof rests upon the State?

MR. JENSEN: Yes.

MS. SHARUM: And my client doesn't have to prove anything?

MR. JENSEN: Yes.

MS. SHARUM: You understand that – I mean, just because maybe you have done something wrong, that doesn't mean you have done everything wrong?

MR. JENSEN: Oh, yeah.

MS. SHARUM: And that the State has to prove everything? Did you understand all that?

MR. JENSEN: Yeah.

MS. SHARUM: And have you ever been involved in any organizations like D.A.R.E. or anything like that?

MR. JENSEN: Like what?

MS. SHARUM: D.A.R.E.

MR. JENSEN: D.A.R.E.? No. I see, that's that organization, isn't it?

MS. SHARUM: Yeah. And you don't know me, or you don't know Mr. Blonigen?

[p. 33] MR. JENSEN: No, I don't.

THE COURT: Thank you. You can have a seat back out there again.

(Mr. Blonigen presents his challenge to the Court and counsel.)

(Ms. Sharum presents her challenge to the Court and counsel.)

THE COURT: Would you call another juror please, Ms. Volin.

THE CLERK: Yes, Your Honor. No. 44, Audrey Brown.

MR. BLONIGEN: Ms. Brown, I see that you're a counselor. Do you ever deal with these sorts of problems in the area you counsel in?

MS. BROWN: Yes, yes.

MR. BLONIGEN: Have you been counseling in Casper long?

MS. BROWN: Two years this time. I was gone for three years, and I was here three years before that.

MR. BLONIGEN: Okay. From your experience in your work, would you say this is a significant problem in this community?

MS. BROWN: Oh, yes.

MR. BLONIGEN: Anything about the experience [p. 34] you had – through your counseling experiences – that you think would affect your ability to sit impartially in this case?

MS. BROWN: No, I don't think so.

MR. BLONIGEN: Did you know any of the people we listed off?

MS. BROWN: No.

MR. BLONIGEN: And is there any reason you wouldn't be a fair juror that you can think of, from what we talked about here today?

MS. BROWN: No, I can't.

MR. BLONIGEN: That's all the questions I have, Your Honor.

MS. SHARUM: You have been a counselor here, and you're aware of the drug methamphetamine or crank?

MS. BROWN: Uh-huh.

MS. SHARUM: And you don't think – like the analogy I used before, this is like a race. Everybody has to start off on the same playing field. Since you have a lot of knowledge about this, you don't think it would affect you?

MS. BROWN: No, I don't know where my knowledge about it would affect my ability to make a judgment on somebody.

[p. 35] MS. SHARUM: Do you think that maybe because you know a lot about this drug that you might have some feelings about it one way or other?

MS. BROWN: I don't see where my knowledge of the drug would affect my ability to make a judgment here.

MS. SHARUM: Well, – I.

MS. BROWN: I – I guess I am not understanding what you're asking me.

MS. SHARUM: Well, this is a case about this drug. I mean, do you have feelings about this drug? I mean, if you have feelings towards it, do you think it might affect your decision because you've heard of it before?

MS. BROWN: Feelings about it? Like, it's something people shouldn't use, people shouldn't do these sorts of things? Is that what you're asking?

MS. SHARUM: Yes.

MS. BROWN: I suppose there is that sense.

I think that people shouldn't eat too much. I think people shouldn't have outrageous fights with their husbands or wives. I think people shouldn't beat their children. I have those feelings, but I still think I could come to some sort of judgment about it.

MS. SHARUM: Do you think – what I'm asking [p. 36] is, do you think because you know maybe, perhaps a little bit more about this drug than most people, that you might have stronger feelings about it than another person?

MS. BROWN: I don't think so.

MS. SHARUM: You understand that my client doesn't have to prove anything here today?

MS. BROWN: Yes.

MS. SHARUM: And you said you had been a counselor in this community. Have you ever heard of anybody named David Young before?

MS. BROWN: I don't believe so.

MS. SHARUM: What about Vanessa McQueery?

MS. BROWN: I don't believe so.

MS. SHARUM: You're not familiar with those names either?

MS. BROWN: Huh-uh.

MS. SHARUM: Do you feel – I mean, have you ever been involved in the organizations like D.A.R.E. or anything like that?

MS. BROWN: No.

MS. SHARUM: Have you ever been active in any sorts of those organizations?

MS. BROWN: Drug organizations, you mean?

MS. SHARUM: Yeah, yeah.

[p. 37] MS. BROWN: No, huh-uh.

MS. SHARUM: Okay.

MS. BROWN: I've been certified as a drug counselor at one time.

MS. SHARUM: And as a drug counselor, you met and worked with people who have been on drugs?

MS. BROWN: Oh, yes absolutely.

MS. SHARUM: And do you think that could have any impact on your decision-making process? Because you've seen people before who have been on drugs?

MS. BROWN: I don't think so.

MS. SHARUM: You don't think it would have any impact, okay.

No further questions.

THE COURT: Thank you. You can have a seat back out there.

(Mr. Blonigen presents his challenge to the Court and counsel.)

(Ms. Sharum presents her challenge to the Court and counsel.)

THE COURT: Would you call another juror please, Ms. Volin.

THE CLERK: Yes, Your Honor. No. 141, Todd Garriott.

[p. 38] MR. BLONIGEN: Mr. Garriott, did you know any of the people we listed here today?

MR. GARRIOTT: No.

MR. BLONIGEN: What about the nature of this case involving methamphetamine? Does that cause you any concerns?

MR. GARRIOTT: I think I probably would have a bias, because I've seen a lot of my friends destroy their lives over it. And I have lived in this town all my life, and it's rampant. It's like a disease.

MR. BLONIGEN: It is pretty dangerous stuff. You've known people yourself –

MR. GARRIOTT: I've actually tried it myself, sir, and I am ashamed to admit that. But I have tried it, and it's a very, very dangerous drug. And we should do all we can to get it out of the hands of kids and young adults.

MR. BLONIGEN: Do you think that your feelings are so strong that you couldn't sit fairly on this jury? I mean, we still have to prove –

MR. GARRIOTT: I still have to – I've been thinking about that since I've sat here and listened to this, and I really have a problem with that. Because, like I said, I've seen so many people [p. 39] destroy their lives over it that – as far as them having possession, and I – I don't know the facts so I can't say about that. But as far as my feelings of the drug itself, they are pretty strong.

MR. BLONIGEN: And I guess that's my question to you. Can you separate that from the fact that we have to prove that she did possess it?

MR. GARRIOTT: I think I could, yeah.

MR. BLONIGEN: And I ask you because you know whether you had reservations. Because, obviously, you have been thinking about it. But if you think you can set that aside and look at whether she did, in fact, possess it, I suppose that's the real question here.

MR. GARRIOTT: I think I could be impartial –

MR. BLONIGEN: – in that regard?

MR. GARRIOTT: Uh-huh.

MR. BLONIGEN: Okay. Do you know any of the people we listed?

MR. GARRIOTT: No.

MR. BLONIGEN: Other than the concerns you've already told us about, do you have any other concerns about being a fair juror in this case?

MR. GARRIOTT: No.

MR. BLONIGEN: Now, because of the way you [p. 40] feel about the drug, you will still require us to

prove that beyond a reasonable doubt, and it's our burden to prove in this case?

MR. GARRIOTT: Yeah, I understand all that.

MR. BLONIGEN: That's all the questions I have, Your Honor.

MS. SHARUM: You've told us that you have very strong feelings about that drug. You've heard about it. You've seen about it. You said you think you can be objective. But, I mean, do you think this is going to have any effect on you at all that you might be a little more skeptical?

MR. GARRIOTT: You mean as far as the possession charge?

MS. SHARUM: Yeah. As far as these charges go, and as far as my client goes, are you going to give us less credibility because that's the kind of charge we're facing?

MR. GARRIOTT: No.

MS. SHARUM: You don't think it's going to have any effect on you, even though you have very, very strong feelings about this?

MR. GARRIOTT: No. Like I said, I have feelings about the drug itself, but against your client I don't, no.

[p. 41] MS. SHARUM: Would it bother you if you had heard that she has admitted to some part of the allegation; that maybe she's admitted in the past she has used the drug? Would that bother you?

MR. GARRIOTT: No. Because like I said, I've tried it myself, and I – like I said, I don't like to admit that. But I am trying to be honest. So if you ask me directly, I would have to say, yeah.

MS. SHARUM: So you think, like on a race track, you're going to give us a level playing field. If – we are going to start off at the same point in your mind, both me and the district attorney? You don't think that because of your strong feelings you may be apt to give him a little more credit?

MR. GARRIOTT: No.

MS. SHARUM: You don't think you're going to do that?

MR. GARRIOTT: No.

MS. SHARUM: You don't think you're going to have any problems at all?

MR. GARRIOTT: Not as far as a judgment would be concerned, no.

MS. SHARUM: Okay. Now, I asked before, [p. 42] have you ever been involved in any organizations concerning the banning of drugs, like D.A.R.E. or things like that?

MR. GARRIOTT: No.

MS. SHARUM: You stated before that you know a fair amount about this drug. You've tried it before and everything, so you know a little bit about the drug culture I take it?

MR. GARRIOTT: Right.

MS. SHARUM: Do you think – will that have any effect on you?

MR. GARRIOTT: No.

MS. SHARUM: Do you think that's going to make you less or more likely to believe the defense or the prosecution?

MR. GARRIOTT: No.

MS. SHARUM: You don't think it will have any effect at all?

MR. GARRIOTT: No.

MS. SHARUM: Okay. I have no further questions.

THE COURT: Thank you. You can resume your seat out there.

(Mr. Blonigen presents his challenge to the Court and counsel.)

[p. 43] (Ms. Sharum presents her challenge to the Court and counsel.)

THE COURT: Would you call another juror please, Ms. Volin.

THE CLERK: Yes, Your Honor. No. 310, Diane Ready.

MR. BLONIGEN: Ma'am, did you know any of the people we listed off here today?

MS. READY: No.

MR. BLONIGEN: Have you ever known anybody that had a problem with this particular substance?

MS. READY: No.

MR. BLONIGEN: Anything about this kind of case that bothers you and your ability to sit as a fair juror?

(The potential juror shook her head.)

MR. BLONIGEN: Any reason you couldn't serve as a fair juror in this case?

MS. READY: No.

MR. BLONIGEN: That's all the questions I have, Your Honor.

MS. SHARUM: Is it going to bother you that I am a little bit nervous?

MS. READY: No.

MS. SHARUM: It won't bother you at all?

[p. 44] MS. READY: No, if you talk a little louder.

MS. SHARUM: I'm sorry. Is that going to bother you that, apparently, I am talking very softly?

MS. READY: Uh-huh.

MS. SHARUM: Would you hold that against my client?

MS. READY: No.

MS. SHARUM: Now, you live 30 miles out of town now?

MS. READY: Yes.

MS. SHARUM: Is that going to be a hardship on you?

MS. READY: It would be if the weather is bad, because I don't drive when the weather is bad.

MS. SHARUM: As Mr. Blonigen told you, this will probably be a day or day and a half trial. Is that going to –

MS. READY: Well, it depends on if it snows tonight. Because I have a dirt road to get to before I can get on the highway.

MS. SHARUM: I have no idea if it's supposed to snow tonight or not. Have you ever known anybody that uses drugs or anything?

MS. READY: Not that I know of. I don't [p. 45] know if they have or not.

MS. SHARUM: And you don't know anyone who is in this case? You don't know Officer Baldwin or Officer Peters?

MS. READY: No.

MS. SHARUM: Do you think that the defense here has to prove something here, or do you understand that the burden of proof rests solely on the prosecution?

MS. READY: Uh-huh.

MS. SHARUM: And they have all the burden. We don't have to show anything at all.

(The potential juror nodded her head.)

MS. SHARUM: So would it bother you if my client doesn't testify?

MS. READY: No.

MS. SHARUM: Would it bother you if we don't put on any witnesses?

MS. READY: No.

MS. SHARUM: Is it going to bother you that we aren't likely to come up with that surprise Perry Mason witness?

MS. READY: No.

MS. SHARUM: No further questions.

THE COURT: Thank you. You can be seated [p. 46] out there again.

(Mr. Blonigen presents his challenge to the Court and counsel.)

(Ms. Sharum presents her challenge to the Court an counsel.)

THE COURT: Would you call another witness please, Ms. Volin.

THE CLERK: Yes, Your Honor. No. 151, Patricia Gunderson.

MR. BLONIGEN: I see you were on jury duty before?

MS. GUNDERSON: Yes.

MR. BLONIGEN: What kind of case was that?

MS. GUNDERSON: A traffic violation.

MR. BLONIGEN: Okay. Any other jury duty other than that?

(The prospective juror shook her head.)

MR. BLONIGEN: Same questions that we had for all the other folks. Did you know any of the people we listed off here today?

(The prospective juror shook her head.)

MR. BLONIGEN: Any questions about the kind of case it is?

MS. GUNDERSON: No.

MR. BLONIGEN: Do you have strong feelings [p. 47] one way or other about drug cases and the Government's involvement in drug enforcement?

MS. GUNDERSON: No.

MR. BLONIGEN: Can you think of any reason you couldn't be a fair juror in this case?

MS. GUNDERSON: No.

MR. BLONIGEN: That's all the questions I have, Your Honor.

MS. SHARUM: Do you understand that the State has the burden of proof? My client doesn't have to prove anything?

MS. GUNDERSON: Right.

MS. SHARUM: Is that going to bother you if my client doesn't testify?

MS. GUNDERSON: No.

MS. SHARUM: Is it going to bother you if a defense is not put on?

MS. GUNDERSON: No.

MS. SHARUM: It wouldn't bother you at all? It won't bother you?

MS. GUNDERSON: No. I mean, obviously it makes a difference, but can I put that aside, yes.

MS. SHARUM: What do you mean by you think it makes a difference? How do vou think it makes a difference?

[p. 48] MS. GUNDERSON: Because it may or may not happen. The continuum is very broad for the kind of evidence that they may or may not present. So if, for instance, the case presented evidence that was marginally believable, I think it would be in your best interest to put something on.

MS. SHARUM: But you understand that we don't have to do that?

MS. GUNDERSON: Absolutely.

MS. SHARUM: And if my client doesn't want to do that, if she's nervous about talking in public or anything like that, she doesn't have to do that?

MS. GUNDERSON: Sure.

MS. SHARUM: And do you understand that if the State puts on a marginal case, and you don't think it meets reasonable doubt, whether or not I put on a defense makes no difference?

MS. GUNDERSON: Yes, I understand the difference between a preponderance of the evidence and simply a majority of evidence.

MS. SHARUM: And you understand the standard here is reasonable doubt?

MS. GUNDERSON: Yes, absolutely.

MS. SHARUM: And you would have to find that standard being reasonable doubt?

[p. 49] MS. GUNDERSON: Absolutely.

MS. SHARUM: You understand that my client is presumed innocent?

MS. GUNDERSON: Uh-huh.

MS. SHARUM: Now, I notice you have two small kids?

MS. GUNDERSON: Uh-huh.

MS. SHARUM: Ages 7 and 9?

MS. GUNDERSON: Yes.

MS. SHARUM: Is that going to be a hardship on you?

MS. GUNDERSON: Actually, my nine-year-old is sick today, but my mother is with her.

MS. SHARUM: So that won't be a hardship on you?

MS. GUNDERSON: I don't believe so.

MS. SHARUM: I noticed it could be a hardship?

MS. GUNDERSON: Well, I mean, it's not going to be a nine-month trial, right?

MS. SHARUM: No, it won't be a nine-month trial. Do you think you can be fair and, and impartial on this?

MS. GUNDERSON: Yes.

MS. SHARUM: Do you have any strong feelings [p. 50] about drugs?

MS. GUNDERSON: Generally?

MS. SHARUM: Yeah, drugs generally?

MS. GUNDERSON: Insofar as I have two small children that eventually might have to deal with that problem. I have those kinds of feelings. I think it's probably common.

MS. SHARUM: Have you ever been involved in any organizations like D.A.R.E. or M.A.D.?

MS. GUNDERSON: I've given money to both D.A.R.E. and M.A.D., but I have not been actively involved on a personal level.

MS. SHARUM: Do you think that if a person admits she does something wrong, that she must have done everything the State says she did wrong?

MS. GUNDERSON: No, absolutely not. People repent and change all the time.

MS. SHARUM: So if somebody says, "I did this wrong, but I didn't do this." Okay, then you don't believe that means she did everything?

MS. GUNDERSON: Absolutely.

MS. SHARUM: No further questions.

THE COURT: Thanks. You can be seated back out there again.

(Mr. Blonigen presents his challenge to the [p. 51] Court and counsel.)

(Ms. Sharum presents her challenge to the Court and counsel.)

THE COURT: Would the following persons now seated in the jury box please have a seat out in the audience section of the courtroom, and when I call your names, I can excuse you in a few minutes.

Mr. Sword, Mr. Vernon, Ms. Scott, Mr. McLellan and Ms. Kennedy.

THE COURT: Ms. Ready, would you please take the seat at the top row on the left-hand side. Ms. Hume, would you please take the first vacant seat on the left, in the second row. Ms. Gunderson, would you please take the seat next to her. Ms. Keith, would you please take the next vacant seat in that row. Mr. Jensen, would you please take the vacant seat here in the front row.

Do you accept the jury, Mr. Blonigen?

MR. BLONIGEN: The State accepts the jury, Your Honor.

THE COURT: Do you, Ms. Sharum?

MS. SHARUM: The defense accepts the jury, Your Honor.

THE COURT: Would you please swear the jurors to faithfully hear and try the case, [p. 52] Ms. Volin.

THE CLERK: Yes, Your Honor.

(The jury is sworn to try the case.)

THE COURT: Please be seated. Ms. Davis, would you please come forward to be sworn to take charge of the jury during the recesses.

(The bailiff is sworn by the clerk.)

THE COURT: Ladies and gentlemen, before we take a recess here, I want to thank the remaining members of our jury panel. For those of you in the audience section of the courtroom, it will not be necessary for you to return for any further proceedings in this case.

We appreciate your patience and cooperation in helping us to select the jury here. For those of you on the jury, if you will go with Ms. Davis during the recess, she will show you where the jury room is.

We will be in recess for about 20 minutes.

(The jury leaves the courtroom, and the morning recess is taken at 10:02 a.m.)

(Back on the record at 10:30 a.m.)

THE COURT: I would like to read to you a general instruction before the commencement of this trial.

[p. 53] (The Court reads general Instruction No. 1 to the jury at this time.)

THE COURT: Do you wish to make an opening statement, Mr. Blonigen?

MR. BLONIGEN: Yes, Your Honor.

OPENING STATEMENT

BY MR. BLONIGEN:

This case isn't about the Calley Cartel or a huge drug dealer, but it's about people that make those businesses work. It's about customers.

On July 23, 1995, Sandra Houghton was a customer. Officer Baldwin, on routine duty within Natrona County, stopped a car occupied by three people. It was driven by a man named David Young. The defendant was a passenger in that car, and so was a 16-year-old female, a minor.

Officer Baldwin observed something unusual almost immediately, because the driver, Mr. Young, had a syringe in his pocket, the kind commonly used for taking illegal drugs. It's 1:15 in the morning. He has the people get out of the car. Based upon his observation of that syringe, he conducted a search of that vehicle.

And the defendant's possession will be clearly proved by very simple evidence; one, the [p. 54] defendant was in the car, and two, her purse was located in that car during that search. The purse was closed.

The defendant gave her name as Sandra James, as you'll hear from the evidence. The officer searched the purse first, finding the identification of Sandra Houghton. No other individual, only Sandra Houghton.

When he asked her, "Why did you tell me your name was Sandra James?" She said, "In case things go bad here." And very soon they did. And you will hear the officer testify he then searched the remainder of the purse. One black wallet with a syringe with a residue in

it, about 10 cc's, and a vial containing 20 to 30 cc's of what was later tested to be methamphetamine.

In another brown container he found yet another syringe, this time with almost 60 cc's of what later proved to be liquid methamphetamine.

Now, the defendant, while the search is being made, claims the black package – which you will see – is hers. She says – when he pulls out the brown one – she goes, "Oh, that's not mine."

This is what she claims. But it's in her possession. It's in her purse with the other items, [p. 55] and you'll hear that the syringe found with the 60 cc's is the same as the syringe that was found in the wallet that she said was hers.

Now, as you heard the judge read the statute this morning, Felony Possession requires .3 of a gram or $^{3}/_{10}$'s of a gram. You will find that in this case that Ms. Houghton was in possession that day of almost $^{8}/_{10}$'s of a gram, more than twice as much as the statute requires.

She stated initially to Officer Baldwin that her name was Sandra James, and she changed that. And when they found the syringe in her purse, the officer also noted that she had track marks on her arm. She was nervous and giving a false name.

At first she claimed, "Part is mine and part is not." Regardless, it's all in her possession. But the next week she talked to the Division of Criminal Investigation.

MS. SHARUM: Objection Your Honor. I think – can we approach the bench?

THE COURT: All right.

(The following discussion was held at the judge's bench, out of the hearing of the jury.)

MS. SHARUM: Your Honor, I think Mr. Blonigen's giving an argumentative opening [p. 56] statement about the talks the defendant had with the DCI, and his sole purpose here is to inflame the jury. Therefore. I think these talks should not be admissible, Your Honor.

MR. BLONIGEN: Judge Sullins already ruled them admissible.

MS. SHARUM: And I've already filed written notice of an objection to that, Your Honor.

THE COURT: I'll overrule the objection. You can proceed, Mr. Blonigen.

(The following proceedings were held in open court, with the jury present.)

MR. BLONIGEN: This defendant, on August 1, 1995, confessed that, in fact, the methamphetamine was hers, that she knew what it was, and she intended to use it.

Ladies and gentlemen, every defendant in this country is entitled to proof beyond a reasonable doubt. And they are all entitled to a trial. But the State believes that once you review this evidence of the items directly found in her purse, directly identified by her, and later admitted to be hers, which she intended to use, that there will be no reasonable doubt about Ms. Houghton's guilt in this case.

[p. 57] OPENING STATEMENT

BY MS. SHARUM:

Ladies and gentlemen of the jury, you're going hear about this case, and you will hear a lot of things about it. This is sort of like a jigsaw puzzle. You will get little bits and pieces at a time, and then you are going to put it all together.

And it will be very important that you pay very close attention to what goes on here today and listen to what everybody says here today. Listen to me and listen to all the witnesses. It's very important that you listen to everybody.

Now, the State's told you that they will produce evidence that says that there was a traffic stop. And there was a traffic stop. They will tell you about the traffic stop, and they will tell you about what occurred at this traffic stop. And there were three people in this car. There was one male and two females, and there was a purse in this car. They have a small car, and anybody could have had access to that purse, and anybody could have done it.

And you have heard the State tell you that there will be a situation where you then hear about [p. 58] a false name. Well, my client got scared. That may not be a good thing to do, but she did. She got scared at this traffic stop, and I guess everybody can get scared sometimes when the police come up to them.

You are also going to hear about statements against her. You will hear about things she said happened, and you will hear she admitted she had done something wrong here. She gave a false name. And she admitted to

another thing. She admitted the syringe was hers, but she looked at that and said, "That is not mine."

Now, when she is making these statements, she has no idea what effect this is going to have on her. She doesn't know if this will make this better or worse. She really doesn't. She doesn't know exactly what she's confessing to. She just says, "This one is mine, this one isn't." She's simply telling them the truth about which one. She said which one she possessed.

And the question then becomes, did she possess the .3 grams? The syringe that she says is hers doesn't equal that. That's an important factor to keep in mind. The law is technical in this area. And you will have to think about that very [p. 59] importantly. Because although it is technical, those technicalities mean something. They're very, very important. And you will have to pay attention.

They have to prove every element and weight it as an element. They will have to prove that. They will have to prove possession and prove all those elements here today.

Like I said, this is like a jigsaw puzzle, and there is going to be a lot of pieces. And this is a very important job for you. Because this is very serious. I mean, anytime you're charged with a crime, this is a serious, serious situation.

This is very, very serious. This means a lot, and you're asked to pay attention to those pieces and to listen very carefully, and listen to us very carefully today. Thank you.

THE COURT: Mr. Blonigen.

MR. BLONIGEN: We will call Officer Baldwin, Your Honor.

ROBERT BALDWIN,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLONIGEN:

Q Would you state your name for the record, [p. 60] please.

A Robert Delane Baldwin.

Q Where are you employed, Mr. Baldwin?

A I'm employed in Casper, with the Wyoming Highway Patrol.

Q How long have you been a police officer?

A Approximately seven and a half years.

Q In addition to your training with the highway patrol, did you receive any special training involving narcotics investigation?

A Yes, I did.

Q Could you explain for us briefly when and where that was?

A In the fall of 1988, when I was employed, I received eight hours of drug introduction training at the Wyoming Law Enforcement Academy.

In 1993 I had an eight-hour refresher course at the Wyoming Law Enforcement Academy, and then in April

of this year, I received a seven-hour drug training course in Guernsey, Wyoming.

Q Now, were you on duty on July 23, 1995?

A Yes, I was.

Q At approximately 1:00 a.m. that morning, did you have contact with a vehicle driven by David Young?

[p. 61] A Yes, I did.

Q Where were you when you first observed the Young vehicle?

A I was assisting another officer at a traffic stop on the interstate between Bryan Stock Trail and the Evansville exit. We were eastbound on a traffic stop.

Q You were heading towards Douglas then?

A That's correct.

Q Who was that officer?

A Officer Troy Mizell.

Q What drew your attention to the Young vehicle?

A The vehicle was exceeding the speed limit when it went by. And after it passed, the brake lights came on, and there was one brake light that worked.

Q Which direction was that vehicle headed?

A It was headed east.

Q What sort of vehicle was it?

A It was a 1977 Cadillac.

Q And Ms. Sharum has described that as a small vehicle. Is that a small vehicle?

A No, it is not.

Q What did you do at that point in time?

[p. 62] A We were clearing – the other officer and I were nearly completed with the other traffic stop, and I got in my vehicle and went to catch up to the vehicle that passed me with some equipment violations.

Q Did you observe the path the vehicle took?

A Yes, I did.

Q Could you describe that for us, please?

A The car went, as I said, eastbound on I-25, taking the Evansville exit and went to the traffic light at the intersection of Wyoming Boulevard, next to the truck stop. It stopped at the light and made a left-hand turn.

I followed the vehicle underneath the interstate through the traffic light that is there. I turned on my emergency lights and stopped the vehicle.

Q Where did you turn on your emergency lights?

A Just as we were going through the traffic light, on the north side of the interstate.

Q Did the vehicle pull over?

A Yes, it did.

Q Where did the vehicle pull over?

A It pulled over, making a right-hand turn into the Mini-Mart parking lot.

[p. 63] Q Is that entire area you have described, within Natrona County?

A Yes, it is.

Q Upon your pursuing this vehicle, and through the time you stopped it, did you see any unusual movements or sudden movements within the vehicle itself?

A No, I did not.

Q Upon stopping the vehicle, who exited first, you or the driver?

A I did.

Q Did anyone exit from the other vehicle?

A Not at that point, no.

Q What did you do at that point?

A I approached the driver of the vehicle to obtain a driver's license, registration and insurance information.

Q Did you identify that driver?

A Yes, I did.

Q As whom?

A David Young.

Q Were there any passengers in the car?

A Yes, there were.

Q Did you identify the passengers?

A Not at that point, I didn't.

[p. 64] Q When you stop a vehicle like this, do you light up that vehicle?

A Yes, I do.

Q How do you do that?

A I have take-down lights that are part of the light bar unit itself, and I also have a spotlight on the left-hand side door post, and I also carry a flashlight.

Q After you lit up the car again, until you contacted the driver, did you see any unusual or sudden movements within the vehicle itself?

A No, I did not.

Q You stated you identified the driver as David Young. When you identified the driver, did you notice anything unusual about him?

A Yes, I did.

Q What was that?

A In his left front shirt pocket there was a hypodermic syringe that was visible in the inside of the pocket.

Q Why was that significant to you?

A Based on my training, it is commonly used in the taking of illegal drugs.

Q At that point in time, what did you do?

A Shortly before that, the other officers – [p. 65] there was an Officer David Evans that also came to assist me, and Officer Mizell came after he completed his stop.

I went to the back of the suspect's vehicle and informed him that I had seen the syringe in his shirt pocket, and I needed to get some gloves to put on my

hands. And I was going to question him as to the use of the syringe.

Q At this time, had you obtained Mr. Young's license and registration?

A Yes, I had.

Q Who provided that to you?

A Mr. Young.

Q While you retrieved your gloves, was anyone watching the occupants in the vehicle?

A Yes, they were.

Q Who was that?

A Officer Mizell.

Q During this period of time, then, you went and you got your gloves from your car; is that correct?

A That's correct.

Q How far from the suspect vehicle are your gloves?

A Fifteen feet, approximately.

[p. 66] Q Had you identified the other occupants of the vehicle at this time?

A No, I had not.

Q Okay. What did you do after retrieving your gloves?

A I returned to David Young and asked him to get out of the vehicle, and that I knew he had a syringe in his shirt pocket.

I asked him to remove the syringe and to place it on the hood of the car. He did so, and I asked him what he used the syringe for, and he advised that he used it to take drugs.

Q Had you conducted any search at this point in time?

A No, I had not.

Q Where was Mr. Young then, after you retrieved the syringe and had this short conversation with him?

A He was standing outside the vehicle.

Q Where were the two passengers?

A Inside the vehicle..

Q What did you do at that point in time then?

A The other officers removed the other two occupants of the vehicle. There were two females. And I continued to – I searched the rest of [p. 67] Mr. Young to see if there were any other drugs or weapons.

Q Was the defendant, Sandra Houghton, one of those passengers?

A Yes, she was.

Q Could you identify her, if she is in this courtroom today, please?

A She's in the pink sweater, sitting at the defendant's table.

MR. BLONIGEN: May the record reflect he's identified the defendant, Your Honor.

THE COURT: The record may so indicate.

Q (By Mr. Blonigen) During this contact, did she identify herself in any manner?

A Yes, she did.

Q And how was that?

A She identified herself as Sandra James, with a date of birth of November 23, 1944.

Q Now, did she provide any identification to that effect?

A No, it was a verbal identification.

Q Did you ask her for identification at that time, if you recall?

A She was asked for identification and said she did not have any.

[p. 68] Q Where are the two passengers then at this time? You stated you already had Mr. Young out of the car, where are the two female passengers at this time?

A At this point, all of the occupants were outside the vehicle.

Q What did you do at that point?

A After obtaining the information from the occupants, a pat-down was performed. And that was not done specifically by me, but the other officers assisted, to see if there were any other weapons, for our safety, while I searched vehicle. And we did what we call an NCIC or criminal history check to see if any of the people were wanted, and we were waiting for the results of that.

Q And I take it that was negative?

A That's correct.

Q Why did you search the car, Officer Baldwin?

A Because I found a syringe commonly used for the use of illegal drugs. The driver stated that he used it to take illegal drugs, and I had probable cause to believe there may be further drugs inside the vehicle.

Q You stated all three persons were out of the vehicle then; is that correct?

[p. 69] MS. SHARUM: Objection. This is leading the witness, Your Honor.

MR. BLONIGEN: He's already testified to this, Your Honor. I don't think it's leading.

THE COURT: I'll overrule the objection.

Q (By Mr. Blonigen) Did any of them take anything out of the car, that you saw?

A No, they did not.

Q Which portion of the vehicle did you search first?

A I searched the front driver's side of the vehicle.

Q Did you find anything?

A No, I did not.

Q What portion did you search next?

A I searched the driver's-side back seat and floor area.

Q And in the driver's-side back seat or floor area, did you find anything?

A Yes, I did.

Q What was that?

A I found approximately a one and a half foot square, cloth lady's purse.

Q Was it closed?

A Yes, it was.

[p. 70] Q Now, I will come back to the purse in a moment, Officer. Did you search the rest of the vehicle as well?

A Yes, I did.

Q And in the interior of that vehicle, did you find anything else?

A No, I didn't.

Q Going back to the purse, where was it located again?

A It was in the back seat.

Q You indicated it was closed. Was it upright?

A Yes, it was.

Q Was it on the seat or on the floorboard?

A It was on the seat approximately – pretty much centered in the back seat.

Q What did you do with the purse at that point in time?

A I opened the purse, and I observed the contents and removed a wallet from the larger purse.

Q Did you look in that wallet?

A Yes, I did.

Q Did you find any indication in the wallet of who the wallet and the purse belonged to?

A Yes, I did.

[p. 71] Q And who was that?

A In that wallet was a driver's license with the name Sandra K. Houghton and further driver's license information on it.

Q Was there a picture on the driver's license?

A Yes, there was.

Q Did you recognize the picture on the driver's license?

A Yes, I did.

Q As whom?

A It was the defendant's driver's license.

Q When you found that, what did you do?

A I stood up from in the vehicle and I said, "Sandra, come here."

Q Was she in custody at this time?

A No, she was not.

Q What happened then?

A She walked over to driver's side of the vehicle, and I showed the driver's license to her and asked if it was hers, and she said, "Yes."

Q Did you have any further conversation with her at that time?

A Yes. I asked her why she gave a false name, and she advised me that was in case things went bad. And I asked "What things?" And she didn't [p. 72] answer.

Q What did you do at that point in time?

A I took another small wallet bag out of the larger purse, and I opened it up.

Q Okay. What color was this container?

A It was brown.

Q Now, where was the defendant when you were going through these items in her purse?

A Approximately three feet from where I was, with another officer there.

Q Could she see what you were doing there, if you know?

A Yes, she could.

Q And you stated you removed an object from the purse; is that correct?

MS. SHARUM: Objection. May we approach?

(The following discussion was held at the judge's bench, out of the hearing of the jury.)

MS. SHARUM: I would like to renew my objection to the admissibility of this evidence which is about to be brought in, on the grounds of the Fourth Amendment in that it was an illegal search.

THE COURT: I'll overrule the objection.

(The following proceedings are held in open [p. 73] court, with the jury present.)

Q (By Mr. Blonigen) Officer, I direct your attention to the contents of the manila envelope marked State's Exhibit No. 1. Would you observe the contents of that envelope, please.

(The witness complied.)

Q (By Mr. Blonigen) If you would remove each of the two items in there and place them in front of you – you can remain seated if you would like. And for purposes of the record, item one of the two items he removed – there is one black container and one brown container. Is either one of those containers, the one –

MS. SHARUM: Objection Your Honor.

(The following conversation was held at the judge's bench, out of the hearing of the jury.)

MS. SHARUM: There has been no foundation as to putting in these items into evidence or even as to what he's about to identify. He's doing this to prejudice the jury, Your Honor.

MR. BLONIGEN: Your Honor, he's already identified these items, and we will lay further foundation. I would note for the record, that these exhibits are a black wallet and a shaving kit. There are no items here that will cause any [p. 74] prejudice. He's simply going to identify them at this time.

THE COURT: I'll overrule the objection.

(The following proceedings are held in open court, with the jury present.)

Q (By Mr. Blonigen) Sir, turning your attention, first, to the black wallet. Do you recognize that?

A Yes, I do.

Q And what do you recognize it as?

A This is the – actually, this is the third bag I removed from the larger purse.

Q Is it in the same condition as when you removed it from the purse on the morning of the 23rd?

A Yes, it is.

Q And what is the other item?

A This is a brown bag, the second bag I removed from the larger purse.

Q Now, is that in the same condition as when you seized it that evening?

A Yes, it is.

Q Whose possession have these items been in since the time they were seized?

A These have been in my possession.

[p. 75] Q Did these items themselves ever go to the crime lab?

A No, they did not.

Q Now, you indicated earlier in your testimony you discovered a driver's license; is that correct?

A That's correct.

Q Was the driver's license in either one of the two items you've just identified?

A No, it was not.

Q It was in a separate container?

A Yes, it was.

Q Was any contraband or suspected contraband found in that container with the driver's license?

A No, it was not.

Q You stated that you then continued to search the purse after that time; is that correct?

A That's correct.

Q What was the next item that you removed from the purse?

A This brown bag.

Q Upon removing the brown bag, did the defendant make any comment?

A Yes, she did.

Q What was that?

A That this was not hers.

[p. 76] Q Did she state anything else at that time?

A Not at that point, no.

Q What did you do with that item?

A I opened up – I unzipped the bag – I was unzipping the bag and she said, "That's not mine." And I

continued opening up the bag and removed a plastic container, similar to one that holds a toothbrush, and I removed that from the bag.

Q Was there anything within that container?

A Yes, there was.

Q What was that?

A There was a syringe inside that, containing liquid of approximately 60cc's.

Q Was there anything else in the brown container, other than the toothpaste holder that you described?

A There was quite a bit of other drug paraphernalia, syringes, et cetera, razor blades.

Q Were the syringes new or used, if you could tell?

A Used.

Q Did any of them have any liquid in them?

A Just the one that had the 60cc's.

Q And you observed that?

A Yes, I did.

[p. 77] Q Other than the other drug paraphernalia that you found in that item, did you find anything else that was subsequently tested at the Wyoming State Crime Lab?

A No, I did not.

Q Now, after you removed the syringe, were there any comments made by the defendant?

A I asked Ms. Houghton whose items they were, if they were not hers.

Q Did she respond to you?

A She said she could not tell me.

Q What did you do next?

A I approached the defendant and looked on her arms. I found track marks there and then placed her under arrest.

Q Now, you refer to track marks. Could you explain a little more fully what you found at that time?

A They are pin marks in her arm. They were kind of a bright red, which would indicate that the needle had been injected into her arm.

Q Did they appear to be of recent origin?

A Yes, they did.

Q Did you continue to search the contents of the purse?

[p. 78] A Yes, I did.

Q What other contents, if any, did you observe at that time?

A I removed a smaller black bag.

Q Did either the smaller black bag or the brown bag have any papers indicating any sort of identification whatsoever?

A No, they did not.

Q How would you describe how full they were?

A Relatively full. You could stuff some more things in there, but they were relatively full.

Q Full of what?

A Syringes, spoons, razor blades, drug paraphernalia.

Q Now, referring to the brown kit, are there still items in there that, in fact, that you found that night?

A Yes, there are.

Q Would you open the bag please, Officer.

(The witness complied.)

Q (By Mr. Blonigen) Now, there is a plastic cylindrical object there. Can you pull that out and hold that up please? What is that?

A This is what I found, the loaded syringe that had approximately 60cc's in it.

[p. 79] MS. SHARUM: Objection, Your Honor.

THE COURT: You can state your objection from there.

MS. SHARUM: I think what's about to be shown is highly prejudicial in this case.

THE COURT: I'll overrule the objection.

Q (By Mr. Blonigen) What else is in there?

A Four spoons.

Q From your training and experience, can you tell us what the spoons are commonly used for?

A For mixing a dried methamphetamine with liquid, so that it makes it so it's injectable.

Q How is methamphetamine usually found on the street? What state is it in?

A It's usually in kind of an off-white substance. If it's ground, it is powdery; if it's not, it's called a rock form.

Q Is there any way to inject it without mixing it with some liquid?

A No, there is not.

Q What's the most commonly used liquid?

A Water. Distilled water.

Q Other than the spoons, what else was in that?

A Glass lid of some sort. This could also be [p. 80] used for mixing in. Plunger from the syringe. Another syringe. Another syringe Another syringe. Two more syringes.

Q That was all in that bag?

A There's some more things in there.

Q What else is in there? If you could describe it for the record, please.

A Well, there's two razor blades, and a little plastic bag with white residue in it, a little white baggy.

Q Would you return those items to the brown bag please, officer.

(The witness complied.)

Q (By Mr. Blonigen) You indicated the next item that you found is the black bag, which is part of State's Exhibit No. 1; is that correct?

A That's correct.

Q Again, is it in the same condition as you observed it that day?

A Yes, it is.

Q If I could back up a little bit, Officer. What did you do with the syringe that you observed with the 60cc's of liquid in it?

A Immediately or since I've obtained it?

Q After you took possession of it, what did [p. 81] you do with it?

A I maintained custody of it, and when I returned to the office I placed it in a syringe safe biohazard container. I sealed it, and I sent it to the Wyoming Crime Lab for testing.

Q Now, was the defendant also present when you removed the black wallet-type container?

A Yes, she was.

Q Were you asking her any questions at this point in time?

A No, I did not.

Q Did she volunteer any comments when you removed the wallet?

A Yes, she did.

Q What was that?

A She stated, "That one is mine."

Q Did you open it?

A Yes, I did.

Q And when you opened it, what did you find?

A Similar to the other case, spoons, syringes, razor blade.

Q And in that, were there any syringes with any liquid left in there?

A Yes, there was.

Q And how many were there?

[p. 82] A There was a syringe containing approximately 10cc's of a liquid.

Q Were there any other containers of suspect liquid within the black wallet?

A Yes, there was a cylindrical small vial with a green lid that contained a liquid also.

Q You observed the syringe with 60cc's of liquid, as well as the syringes within the black wallet itself; is that correct?

A That's correct.

Q How would you compare the syringe that you found with the 10cc's of liquid in to the larger one with the 60cc's?

A They were identical syringes.

Q Now, were there any other syringes, other than that one within the bag itself?

A Yes, there was.

Q Approximately how many?

A I believe there were two, maybe three.

Q Anything else within that black wallet?

A Again, the spoons – similar to the brown bag, razor blade.

Q Could you open the black wallet please, Officer. And again, could you show the jurors what items you did retrieve from that?

[p. 83] A Razor blade, spoon.

Q Only one spoon this time?

A Yes. There may only be one spoon – some scissors, syringe, some – a straw, a pen that's hollowed out. A small piece of paper folded resembling a bindle or a container for narcotics or illegal drugs, another syringe. I am not sure what that is. I think it's for eyebrows, and a small bag with some white-powdery residue in it.

Q There was a small bag with white powder residue in the other one as well, wasn't there?

A That's correct.

Q How would you compare the two small containers, plastic containers, that you found in the two –

A They're identical.

Q Are there further items in there officer?

A Yes, there are.

Q What generally are they, without going through them one by one?

A This is a liner for a baby bottle. A pink piece of paper, it has some words on here. I can read them if you would like.

Q Did you determine whether they had anything to do with this case?

[p. 84] A It does not appear to, no. And another syringe, Q-Tips, tweezers – I don't know what that is – and a little container.

Q So you found a vial and 10cc's of liquid in a syringe in the black one and approximately 60cc's in the brown one; is that correct? In a syringe in the brown bag?

A That's correct.

Q What did you do with the three items, then, that had suspect liquid in there?

A They were packaged, as I described earlier, with the other syringe. They were in sort of a sharp proof container and sent to the crime lab for testing.

Q Between the time that you found them in the purse and sent them to the crime lab for testing, did you maintain custody of those items at all times?

A Yes, I did.

Q At any time were those items tampered with or changed in any way from their state when they were seized from the purse?

A No, they were not.

Q You indicated you used a tube that is also commonly known as a biohazard tube?

[p. 85] A Yes, it is.

Q I hand you a manila envelope marked as State's Exhibit No. 2, and I would ask you if you recognize the contents of that envelope?

A Yes, I do.

Q And what is that?

A It is – it's labeled with a sergeant safety tube. It has my handwriting as far as the date, the citation, the case number, and it has a biohazard seal placed across the top of it.

Q Now, what did you do with that tube?

A I placed this tube in certified mail and had it sent to the Wyoming Crime Lab.

Q Did the tube contain all three liquid samples of suspected methamphetamine?

A Yes, it did.

Q Did you seal the tube in any way?

A Yes, I did.

Q How was that?

A With a "Do not open" biohazard seal. And I placed it in the sealed envelope and mailed it certified.

Q At the time you placed the items in there, had they been changed in any way?

A No, they had not.

[p. 86] Q Had they ever left your possession?

A No, they had not.

Q When you placed those in the tube and sealed it, was there any way to get access for those items without disturbing the tube itself or the seal?

A No, there was not.

Q What then did you do with the tube itself?

A I gave it to the secretary, Cathy Delauter, and it was sent out certified mail.

Q Now, prior to the time that you sent it to the crime lab, was any of the liquid removed from any of the containers?

A No, it was not – well, yes. There was a small amount removed from the syringe containing 60cc's.

Q What was the purpose of removing that small amount?

A A field test of the liquid was performed to determine at the scene if it was methamphetamine or not.

Q Have you been trained in the use of such field test kits?

A Yes, I have.

Q When and where was that?

A That would have been the in-service training [p. 87] in 1993 at the Wyoming Law Enforcement Academy.

Q Have you had occasion to use these field test kits since you have completed your training?

A Yes, I have.

Q How many occasions, approximately?

A Twenty, twenty-five times.

Q Did you do so in this case?

A Yes, I did.

Q And did you use the test kit in accordance with your training and the producers specifications?

A Yes, I did.

Q What did you do with the small amount of liquid methamphetamine you removed from the syringe?

A I have – I left it in the brown container where that syringe was removed from.

Q And when you used your field test kit, was there a result shown by it?

A Yes, there was.

Q And what is that?

A It shows a distinct color, which would indicate – if this color appears, the substances show that, in fact, the drug in this case was methamphetamine.

Q And did you get a positive result on your field tests?

[p. 88] A Yes, I did.

Q After all these items, did you ever request the assistance of any other agency in dealing with this case?

A Yes.

Q And what was that?

A I contacted the Division of Criminal Investigation to contact this person. I thought there may be reason to believe that there was drug trafficking and sale of drugs possibly, so I contacted them to further investigate that.

Q And to your knowledge did they, in fact, contact the defendant?

A Yes, they did.

Q Who did you contact from DCI?

A I don't recall the agent that I – that I personally contacted.

Q Did you later speak to Agents Peters and Malone about the case?

A Yes, I did.

Q And did you fill them in on all the information you had obtained that morning?

A Yes, I did.

MS. SHARUM: Objection. Leading, Your Honor.

[p. 89] MR. BLONIGEN: That's all the questions I have, Your Honor.

THE COURT: I'll overrule the objection.

CROSS-EXAMINATION

BY MS. SHARUM:

Q Officer, let's just go over some of the basic facts of this again. You stopped this car on July 23rd?

A That correct.

Q Of 1995?

A Yes.

Q About 1:00 a.m. or so?

A At 1:14 a.m. I made the stop.

Q 1:14. And you stopped the car because it was speeding or partially, that's why you stopped it?

A That's correct.

Q And because a brake light was out?

A That's correct.

Q And there were three persons in that car?

A That's correct.

Q One male, correct?

A Yes.

Q And he was driving, correct?

A Yes, he was.

[p. 90] Q And that male was David Young?

A Yes.

Q And two females, correct?

A Correct.

Q One was Vanessa McQueery?

A Yes.

Q And the other was Sandra Houghton?

A Yes.

Q Okay. And David Young was sitting in the driver's seat of the car?

A Correct.

Q And Ms. Houghton was sitting in the passenger seat, correct?

A She was on the driver – or the passenger side door.

Q Passenger side door, okay. Is this a two-door or four-door car?

A Two door.

Q So she's on the passenger side door?

A Correct.

Q Okay. And Vanessa McQueery is located in the front seat as well; is she not?

A Front seat, middle.

Q Front seat, middle. And then Sandra Houghton is next to her, correct?

[p. 91] A Yes.

Q Okay. Now, you walk up to the car, and the first person you speak to is David Young, isn't it?

A Yes.

Q And as you walk to the car, you notice something unusual in his shirt pocket; isn't that true?

A That's correct.

Q And that unusual thing was a syringe?

A Yes.

Q And from your training you said you suspected that might have been drug related?

A Yes.

Q Now, at this time you asked David Young to exit the vehicle; is that true?

A No, it is not.

Q Okay. But what did you do right then? Went back to your car?

A I asked the other officers to come back with me, and I advised them of the situation.

Q And you eventually had Mr. Young exit the vehicle and did a pat-down search of him?

A When I removed him from the vehicle, I asked him to take the syringe out of his pocket and place it on the car. And he said he used it to take [p. 92] drugs. And at that point I searched him, and it was not a pat-down.

Q After this has occurred, you – you eventually in a few minutes time, you do a search of the car; isn't that true?

A Yes.

Q And the search of the car, before you did that you asked both Sandra Houghton and Vanessa McQuerry to step out of the car?

A I did not personally ask them to get out of the vehicle. But yes, they were out of the vehicle.

Q Now, you stated that you found a purse in the car?

A Yes.

Q And the purse was a brown purse; isn't that true?

A Yes.

Q Okay. And, in fact, it's a brown kind of leather looking purse; isn't that right?

A Could be.

Q You don't recall?

A It was a brown cloth bag.

Q You don't recall if it was – if it looked like it was a leather purse?

A I do not recall it looking like leather, no.

[p. 93] Q Did you keep that purse?

A No, I did not.

Q Okay. Now, as you find this purse it's found on the floor of the – kind of on the floor of the car?

A No, actually it was on the seat.

Q It was on the seat next to my client, correct?

A No, it was in the back seat.

Q In the back seat?

A Yes, ma'am.

Q So, the purse is in the back seat of the car, but it's between – kind of between both Vanessa McQuerry and Sandra Houghton though, isn't it?

A No, it is not.

Q It is not between them?

A No.

Q Now, David Young is sitting in the driver's seat, right? It's his car, right? David Young was in the driver's seat?

A Yes, he was.

Q And Vanessa McQueery is sitting next to him?

A Yes.

Q And Sandra Houghton is sitting next to the [p. 94] passenger side door?

A Correct.

Q And you say the purse was in the back?

A Correct.

Q So, it wasn't next to Sandra Houghton then?

A No, it was not.

Q Now, this is a – the car is an enclosed space; isn't that true? To the extent it's a defined area?

A Yes.

Q Anybody could have had access to that purse prior to this occasion, and you would not have known about it; isn't that true? Prior to the stop?

A That could be, I guess, yes.

Q I mean you would not have known what had happened earlier that day at 2 o'clock or at 10 a.m. or anything like that?

A No, I did not.

Q You would not know if Sandra Houghton left her purse unattended for some portion of the day, would you?

A No.

Q This stop occurred at 1 a.m.; isn't that true?

A 1:14 a.m.

[p. 95] Q 1:14 a.m. At 1:14 a.m. you were talking about – you didn't see any sudden movements in the car, but it was dark at 1:14 a.m.; isn't it?

A Yes, it is.

Q And the dome light was not on in the car, was it?

A No, it was not.

Q Now, as you get this purse out and start to look through it, one of the first things you remove is a brown container; isn't that true? You remove a brown container the one that you have shown?

A Yes, I did remove this from the purse.

Q You removed that first, prior to removing the black one?

A I removed it second, and the black one was third.

Q And the first one was the wallet that contained the identification?

A Correct.

Q Now, you removed the brown item. The second item you removed, it contained a syringe of approximately 60cc's, correct?

A Yes.

Q And the black one contained a syringe of approximately 10cc's?

[p. 96] A And a vial.

Q And a vial. And when you removed the second item, and she says, "That doesn't belong to me." Sandra Houghton said that that wasn't hers; is that true?

A I don't know what item you'd identified when you asked the question.

Q The second item, the brown container, she said that was not hers?

A Correct.

Q And that was the one you removed first – I mean second?

A Of these two containers, it was the first one I removed, yes.

Q So her first thing she does is she says, "This one isn't mine."

A Yes.

Q Now, when you remove the second one, after she has made a general denial, she says, "Well, now that one is mine;" isn't that true?

A Correct.

Q At this point she could have denied both of them being hers, couldn't she?

A Yes, she could have.

Q But she only denied the first one, the brown [p. 97] container?

A Yes.

Q Okay. Now, that evening did you – did you keep that purse, or did you return it to someone?

A These items here are the only things that I confiscated and kept in my custody.

Q So you didn't keep that purse that night?

A That's correct.

Q And you didn't keep the identification of the person in that purse that night, did you?

A No, I did not.

Q And you returned that purse to someone in the car; did you not?

A I left it in the vehicle.

Q Did you – isn't it true that you arrested Sandra Houghton that night?

A Yes, it is.

Q Now, you have her identification in the purse. You assume this is her purse, yet you did not return it to her?

A Correct.

Q You returned it to someone else in the car, apparently, because it was returned, simply, to the car?

A I just left it in the car.

[p. 98] Q Okay. Now, did you arrest David Young that night?

A No, I did not.

Q You didn't arrest him, even though he had a syringe in his pocket?

A That's correct.

Q Did you arrest Vanessa McQueery that night?

A No, I did not.

Q Even though she was found in a car that was found to have drugs in it, you did not arrest her?

A That's correct.

Q Okay. You only arrested my client, Sandra Houghton?

A Yes.

Q And you arrested Sandra Houghton that night because you believed her statement that that one bag was hers, didn't you? That's why you arrested her?

A I arrested her because of possession of a controlled substance.

Q Because you believed her statement that that brown bag, that she admitted to, was hers.

MR. BLONIGEN: Your Honor, if Ms. Sharum wants to have this witness testify as to what he believes and does not believe, I don't particularly object. But the Supreme Court has said that's an [p. 99] improper question. And based upon that, I would object to it. I don't want to taint the record.

THE COURT: I'll sustain the objection.

Q (By Ms. Sharum) Now, when you approached the car that evening – now, you find this purse in that car. Did you at any time – I mean, in the back seat of the car wasn't there clothing as well? I mean, the back seat was pretty full, wasn't it?

A I don't recall it being full, no.

Q You don't recall it being full. How many I mean, you do a lot of these traffic stops, don't you officer?

A Yes, I do.

Q How many do you think you do per week?

A It would vary greatly.

Q You don't have – how many do you think you do per month, average?

A Maybe around a hundred or so.

Q So there are a lot of traffic stops, a lot of things to keep in mind from each of them; isn't there?

A Yes, there is.

Q Now, you eventually found her ID that had a different name on it than the one she had originally given you; isn't that true?

[p. 100] A Yes.

Q And you asked her at some point in time, "Are you Sandra Houghton?" Isn't that true? When you approached her with the ID?

A I asked her if the license was hers.

Q And she admitted to that?

A Yes.

Q And she – she – and in the process of that she admitted, "Yeah, this is mine"?

A Yes.

Q Okay. So she didn't – she – once confronted, she didn't deny something, she simply admitted it? And once confronted, she admitted who she really was?

A Yes.

Q And she admitted when you – when you – when you took out the third bag that that was hers? When you confronted her with that?

A Correct.

Q But she denied the brown bag specifically?

A Yes.

MS. SHARUM: May I have a moment.

Q (By Ms. Sharum) Now, you talked a little bit about comparing syringes, comparing plastic bags. I mean, as far as the number of types of [p. 101] syringes out there – I mean, I know there is a large number of them. But this a fairly common type of syringe, isn't it?

A Yes, it is.

Q I mean, it was one that you can see fairly regularly in your line of work?

A It could be, yes.

Q So, you know – I mean just because there's one type of syringe doesn't mean that other people can't own it; isn't that true?

A That's true.

MS. SHARUM: No further questions.

MR. BLONIGEN: Just a moment Your Honor, I need to observe something.

REDIRECT EXAMINATION

BY MR. BLONIGEN:

Q Officer, you testified you make about a hundred traffic stops a month; is that correct?

A Yes.

Q How many of those involve finding narcotics though?

A Sometimes none.

Q Okay. So as far as that goes, this situation is unusual for you, isn't it?

A Yes, it is.

[p. 102] Q Mr. Sharum asked you several questions about the purse itself. Was it easily within the reach of the defendant?

A I believe it could be, yes.

Q Who would it have been easier to reach for, the defendant or the driver, Mr. Young?

A I would hate to speculate on that.

Q Now, was it clear over on the driver's side when it was found?

A It was close to the center, somewhat on the driver's side.

Q Now, Mr. Sharum asked you several times about her comment, "that's not mine" referring to the brown bag; is that correct?

A That's correct.

Q She said, "It's not mine;" she didn't say, "I didn't know it was there," or "How did that get there," did she?

A No, she did not.

Q The syringe on David Young, you indicated he was not arrested. Is there a problem with arresting people for controlled substance violation who have only an empty syringe?

A The difficulty in that is having the syringe tested. The crime lab will not accept a syringe of [p. 103] that type with little or very little substance in it. They don't wish to handle the syringes any more than anyone else.

And I don't know what those exact policies are, but I know they don't wish to do that.

Q Is there any way you could prosecute somebody for possession without something to test?

A No, there's not.

Q You did not fingerprint the syringes or these bags you have before you; is that correct?

A That's correct.

Q Why is that?

A There is very little surface to the syringe and the other containers are not subject to retaining a good print.

MR. BLONIGEN: I belief that's all the questions I have.

RECROSS-EXAMINATION

BY MS. SHARUM:

Q You said the purse was in the back seat?

A Correct.

Q And you said you did not want to speculate on whether or not it would be easier for the driver or the defendant to get the purse?

A Correct.

But the driver could have gotten to the [p. 104] purse if he wanted to?

A It's possible, yes.

Q And Vanessa McQueery could have gotten to the purse if she wanted to?

A In her case it would have been difficult to get to it. It would have been directly behind her.

Q But she could have?

A Anything is possible.

Q And you don't know whether or not perhaps she left the purse in the car and went somewhere else prior to the traffic stop?

A No. I have no prior knowledge of the purse, no.

Q And you talked about – Mr. Blonigen asked you about the syringe he found on David Young. It could be tested, couldn't it? If you really wanted it to, you could have sent it down to the state crime lab?

A I didn't know that's a crime – why don't you rephrase the question, please.

Q You could have sent the syringe down to the state crime lab? You could have sent it down there?

A I could have sent it, yes.

Q And it possibly could have been tested?

A That would be their determination.

[p. 105] Q And, in fact, haven't you sent that syringe down to the state crime lab?

A No, I have not.

Q You haven't sent it down. But if you wanted to, I guess, you could?

MR. BLONIGEN: Your Honor, it's been answered, and it's argumentative.

THE COURT: I'll sustain the objection.

MS. SHARUM: No further questions, Your Honor.

MR. BLONIGEN: We have no further questions for this witness at this time, Your Honor.

THE COURT: Thank you. You can be excused.

MR. BLONIGEN: The state would call George Angelos.

GEORGE ANGELOS,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLONIGEN:

Q Would you state your name for the record, please.

A George Angelos.

Q Where are you employed, Mr. Angelos?

A I am employed in Cheyenne, at the Division of Criminal Investigation in the crime laboratory [p. 106] section.

Q How long have you been with the crime lab?

A Approximately five years.

Q What are your primary duties at the laboratory?

A I'm a forensic scientist in the chemistry section. Primarily involved in drug identification and gun shot residue examination.

Q And have you had occasion to testify as to drug identification within the state of Wyoming?

A Yes.

Q And have you been admitted as an expert in the courts of the state of Wyoming as an expert in drug identification?

A Yes.

Q What is your educational background for this position, Mr. Angelos?

A I have a Bachelor's in chemistry from Northern Illinois University, a Master's in organic chemistry from the University of Wyoming.

Q And have you received further training in this area?

A Yes.

Q When and where was that?

A In-house, at the crime laboratory.

[p. 107] Q How many occasions have you testified about your testing of controlled substances in the courts of the state of Wyoming?

A We don't keep close records on that, but I would assume approximately – the testifying, did you say?

Q Yes.

A I would say 30 or 40 times.

Q And do you have any approximation as to how many times you have tested suspect substances to determine whether, in fact, they were controlled substances?

A Yes.

Q How many occasions?

A Again, rough estimates of about several thousand times.

Q Are there methods which are available, by which we can tell exactly what a controlled substance is?

A Yes, there are.

Q Are they generally accepted within the scientific community?

A Yes, they are.

Q And have you been trained in these methods of testing to determine the nature of the substance?

[p. 108] A Yes.

Q And did you use such techniques in this case?

A Yes, I did.

Q What was your involvement in this case, Mr. Angelos?

A I was the examiner assigned to this case.

Q What did you receive for testing in this case?

A May I refer to notes?

Q Yes.

A I received three items to test.

Q Would you describe them briefly for us, please.

A Yes. There was a syringe containing a light tan substance, a second syringe also containing a light tan residue, and one glass vial containing a clear liquid.

Q Were the first two items, in fact, syringes?

A Yes.

Q When you received them, did you receive them in the biohazard-tube that we've referred to as State's Exhibit 1 which is before you?

A Yes.

Q How can you identify that as being the same [p. 109] biohazard tube you received from the highway patrol?

A It contains my initials, the case number and the item number.

Q When you received that, were all the items contained in that one tube?

A Yes, they were.

Q And was the seal to that tube intact when it was received?

A Yes.

Q It remained intact until your testing procedures began?

A That is correct.

Q Now, what do you do to test a suspect substance to determine whether, in fact, it is a controlled substance?

A What I do is dependent upon the nature of the material to be tested – specially for this case?

Q Yes.

A I used extraction procedures associated with methamphetamine and then subjected those extracts to gas chromatography and mass spectroscopy.

Q And by use of those devices, can you determine exactly what substance you had before you?

A Yes, I can.

[p. 110] Q Did you remove samples from all three of these containers of suspect controlled substances?

A Yes.

Q And did you also have occasion to weigh the substance inside the syringes and the vial?

A That is correct.

Q Now, when you weigh that, does that include the liquid carrier medium, the suspect substance is in?

A Yes, it would.

Q And in all three of these cases were these in a liquid medium?

A No, one item was a residue.

Q And that was the second syringe?

A Correct.

Q And when you mean residue, what does that mean? What does that term mean?

A It means there's a very small amount of material that we cannot visually identify. It has a particular substance like a powder or what have you. So in a situation like that, we rinse the syringe with an appropriate solvent and then examine that for drug content.

Q Now, there has been testimony here that one syringe had approximately 60cc's of liquid in it; is [p. 111] that correct?

A That's what I had heard in the testimony, yes.

Now, was it within the syringe when you received it?

A Well, I received a liquid that weighed a little over half a gram.

Q Let me back you up a little bit. When we get the weight of the liquid and you give the weight on your report, is that the weight of the liquid in the controlled substance itself or does that include the syringe?

A That does not include the syringe. That would have been the actual liquid contained within the syringe.

Q So, no containers are measured in this way; is that correct?

A Correct.

Q Now, turning your attention first to the larger amount in the syringe, which in your report is listed as I-A. Did you, in fact, subject that substance to your testing?

A Yes, I did.

Q And can you state to a degree of scientific certainty what the substance in that syringe was?

[p. 112] A Yes.

Q And what was that?

A It contained methamphetamine.

Q And what was the approximate weight of that methamphetamine that you received?

A The weight of the sample received was .51 grams.

Q You referred to another syringe that you tested for residue; is that correct?

A Correct.

Q And does that have any weight assigned to it?

A No, sir, that's recorded as a residue.

Q And how do you test that residue amount?

A As I mentioned earlier, I would rinse the syringe with an appropriate solvent and subject that washed extract to chemical testing.

Q And based upon your testing in this case again you – can you state to a degree of scientific certainty what the residue substance in that syringe was?

A Yes. It contained methamphetamine.

Q The third item, your 1-C, a vial. Did you test the substance in that according to the methods you described?

[p. 113] A Correct.

Q And can you state to a degree of scientific certainty what that liquid was?

A Yes, it contained methamphetamine.

Q Now, in that instance, what did the carrier medium and the methamphetamine weigh?

A .27 grams.

Q So the combined total of the two you did weigh was .78 grams; is that correct?

A Yes, sir.

Q Did you place your findings in a written report, Mr. Angelos?

A Yes, sir.

Q I hand you a document which I have marked as State's Exhibit No. 3, and ask you if you recognize this document?

A Yes, I do.

Q And what is that?

A This is an identification report issued by the Wyoming Crime Laboratory.

Q And does it pertain to this case as you have just testified?

A Yes, it does.

Q How can you identify that as pertaining to this case?

[p. 114] A It contains the agency case number and our laboratory case number.

Q And is that, in fact, original of that report baring your signature?

A It appears to be the original, yes.

MR. BLONIGEN: We would move for introduction of No. 3, Your Honor.

MS. SHARUM: No objection, Your Honor.

(State's Exhibit No. 3 was admitted into evidence.)

MR. BLONIGEN: That's all the questions I have for this witness, Your Honor.

CROSS-EXAMINATION

BY MS. SHARUM:

Q Item I-A is found on here. You stated it had .51 grams?

A Correct.

Q And Item 1-C is .27?

A Correct.

Q Okay, now combined they equal .78, but separately they do not. I mean, each one is separate, right?

A Yes.

Q Came in a separate container?

A Correct. They are individual evidence.

[p. 115] Q So one was a syringe, and it was an individual item weighed separately?

A Correct.

Q And the other was a vial of an individual item weighed separately?

A Correct.

Q And the other syringe only had residue in it?

A That's correct.

Q So the weight cannot be determined on that one?

A That's correct.

Q Now, you have no personal knowledge, do you, if my client possessed any of these items?

A That is true.

Q And you don't have any personal knowledge about who else may have possessed them?

A That is true.

Q And you've testified in about 30 to 40 cases?

A Approximately. That's a rough estimation.

Q And how many times in that estimation have you testified on behalf of the State?

A I would say probably all of them.

MS. SHARUM: No further questions.

[p. 116] REDIRECT EXAMINATION

BY MR. BLONIGEN:

Q Based on that last question, just one follow-up question. Are the facilities of your laboratory equally available to defendants, if they choose to use them?

A Yes, it is.

MR. BLONIGEN: That's all the questions I have, Your Honor.

THE COURT: Thank you. You can be excused.

THE WITNESS: May I be excused, so I can go home?

MR. BLONIGEN: We have no objection to him being excused, Your Honor. He needs to return to Cheyenne.

MS. SHARUM: We have no objection, Your Honor.

THE COURT: Okay.

THE WITNESS: Thank you.

MR. BLONIGEN: Your Honor, we have one more witness. Does the Court wish to break at this time? It will probably take longer than 15 minutes.

THE COURT: We will be in recess then until 1:30 in the afternoon.

(Court was in recess at 11:45 p.m.)

[p. 117] (Court reconvened at 1:30 p.m.)

MR. BLONIGEN: The State will call Chris Peters.

CHRIS PETERS,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLONIGEN:

Q Would you state your name for the record, please.

A My name is Chris Peters.

Q Where are you employed?

A I am employed by the State of Wyoming, Division of Criminal Investigation.

Q Are you a police officer?

A Yes, I am.

Q Which department are you originally a member of?

A The Douglas Police Department.

Q I take it the ponytail isn't Douglas Police Department issue. What is your present assignment?

A I am a special agent for DCI.

Q What is your primary area of responsibility in that regard?

A We investigate violations of the Controlled Substance Act.

[p. 118] Q On August 1, 1995, did you have occasion to meet with Patrolman Baldwin in reference to this case?

A Yes.

Q Why did you meet with Patrolman Baldwin?

A He had contacted our agency and requested some assistance.

Q During the course of that meeting, did Officer Baldwin show you various syringes he had seized from the defendant's purse?

A Yes.

Q Do you recall viewing two different syringes?

A Yes.

Q Directing your attention first to what I refer to as the largest syringe, that is the one containing approximately 60cc's of a liquid. Did you observe that syringe?

A Yes, I did.

Q Did you have occasion to attempt to weigh the substance within that syringe?

A Yes.

Q How did you do that?

A I used our scale that we have at the office.

Q If you're not removing the substance from [p. 119] the syringe, how do you calculate the weight?

A We weigh the syringe with the liquid in it and we weigh the syringe of the exact same type and size.

Q Did you have a syringe of the exact same type and size?

A Yes.

Q And how much did the empty syringe weigh?

A 2.9 grams, approximately.

Q And how much did the filled syringe with 60cc's weigh?

A It weighed approximately 3.4 grams or 3.5 grams.

Q Okay. Would it refresh you to look at your report? Did you put that in your report?

A Yes, I did make a report.

Q Is that report made immediately after the contact?

A Yes.

Q Did you place the total weight of the large syringe in that report, officer?

A Yes, I did.

Q And what was that weight again?

A It weighed 3.4 grams.

Q So based on that, you estimated a weight of [p. 120] what for the largest syringe?

A Of the substance?

Q Yes.

A Approximately half a gram.

Q Five-tenths of a gram?

A Yes.

Q Did you do the same with the smaller syringe or the syringe with less substance in it?

A Yes.

Q And, again, what did you do?

A We placed the smaller – or the syringe with less liquid on the scale and weighed it.

Q And did you follow the same procedure as you previously described?

A Yes.

Q Approximately – from that, could you approximate the weight of the liquid in that syringe?

A Yes.

Q And what was that?

A It weighed about a tenth of a gram.

Q About one-tenth of a gram?

A Yes.

Q After speaking with Officer Baldwin, did you attempt to contact the defendant, Sandra Houghton?

[p. 121] A Yes.

Q And do you see that individual here today?

A Yes..

Q Could you identify her for the record please?

A She has sort of purple hair and a purple shirt. She's seated at the defense table.

Q And is that the same person you spoke to on August 1, 1995?

A Yes, it is.

Q Where did you speak to her?

A At the Casper Police Department, in an interview room.

Q Was anyone else present other than yourself and the defendant?

A Yes.

Q Who was that?

A Special Agent Malone.

Q Prior to speaking with her, did you give her a *Miranda* advisement?

A Yes, I did.

Q How do you do that?

A I read it from a card that I carry with me.

Q Do you have that card with you today?

A Yes.

[p. 122] Q Can you give the advisement as you gave it to the defendant that day, please?

MS. SHARUM: Your Honor, I would like to object to the admissibility of this evidence.

THE COURT: I will overrule the objection.

Q (By Mr. Blonigen) Do you have that card with you?

A Yes, I do.

Q Would you take that card out and read the advice as you gave it to the defendant that day?

A It says, "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish. You can decide at any time to exercise these rights and not answer any questions or make any statements."

On the back of the card, No. 1 is, "Do you understand each of the rights I have explained to you?"

Q And what did she state to that?

A She said she did.

[p. 123] Q Go on, please.

A "Having these rights in mind, do you wish to talk to us now?"

Q And what did she respond?

A She said she would.

Q Did you speak to her about the events of July 23, 1995?

A Yes.

Q What did she tell you with regard to the items found in her purse?

A She said that the items, syringes, the other drug paraphernalia were all hers.

Q Did she tell you what was in the syringes?

A Yes.

Q What was that?

A She said that it was methamphetamine.

Q Did she use, when she spoke about that, the plural syringes?

A Yes.

Q Did she state where she obtained that from?

A Yes.

Q Where was that?

A She said that she had obtained it from David Young's house.

Q How did she come into possession of it then, [p. 124] if she found it at David Young's house?

A She said she was cleaning his house and she found it.

Q And did she state what she was going to do with it?

A Yes.

Q What was that?

MS. SHARUM: Objection, Your Honor. If we may approach.

THE COURT: Okay.

(The following bench conference was had out of the hearing of the jury.)

MS. SHARUM: This is highly prejudicial to my client, and I think the probative value is far more than any probative value that he should have.

MR. BLONIGEN: Your Honor, these are statements that the defendant is aware of. She was aware of what the substance was. She knew what it was.

MS. SHARUM: She stated she knew it was methamphetamine. Therefore, I don't understand why her intending to do this later matters. It is still very highly prejudicial.

THE COURT: I'll overrule the objection.

(Back in open court, with the jury present.)

[p. 125] Q (By Mr. Blonigen) Did she state what she was going to do with that?

A Yes.

Q What was that?

A She said she was going to use it.

Q Now, did you question her about how those items got in her purse?

A No.

Q Okay. But she did state they were all hers?

A Correct.

Q Now, you have dealt with methamphetamine quite a bit, I take it, in your work as a DCI agent?

A Yes, I have.

Q Is there any way to ingest methamphetamine with a needle, without using some sort of liquid carrier medium or diluting agent?

A No, there is not.

Q What is most commonly used as a diluting agent or carrier medium?

A Water.

MR. BLONIGEN: That's all the questions I have, Your Honor.

CROSS-EXAMINATION

BY MS. SHARUM:

Q You currently work for the Department of [p. 126] Criminal Investigations?

A The division, yes. The Division of Criminal Investigations.

Q The division, sorry. And you talked with Ms. Houghton on August 1, of 1995?

A Yes, I did.

Q And you talked with her in an interview room at the Casper Police Department?

A Yes.

Q And that conversation did not last very long. It lasted maybe 10 minutes or so?

A I don't remember how long it was.

Q You don't remember exactly – would you approximate that it was approximately 10 minutes?

A That would be fairly close.

Q And it was a brief conversation?

A Yes.

Q You originally went up there in order to talk to her about David Young; isn't that true?

A That is true.

Q And that's what you were originally planning on questioning her about; isn't that true?

A Yes.

Q When you went up there to talk with her, you did not bring the various things that were [p. 127] located – that she's accused of possessing?

A No.

Q You didn't bring them with you, so you didn't point out various items like, "Did you own this?" or "Did you own that?" You did not ask those questions?

A No.

Q Now, you filled out a very brief report about this; did you not?

A Yes.

Q And in that report, you state that Ms. Houghton said she was packing Young's belongings for him and found the syringe. Houghton said that she kept the syringe and put it in her belongings. Now, you put that in the singular; did you not?

A Yes, I did.

Q Like she was talking about a syringe?

A At that particular time, yes.

Q And, in fact, you had gone up and asked her in general about syringes, but she eventually just admitted – she talked about a syringe, not several?

A No.

Q She – according to the statement you have, she talked about the syringe?

A Yes.

[p. 128] Q And that's the syringe she was talking about during most of the conversation?

A That was the syringe with the largest amount, yes.

Q How do you know, if she didn't specifically identify it for you?

A No, no. She didn't, you're correct, but that was the big one with the most stuff in it.

Q How did you know that, if you didn't bring up the syringe and say, "Is this the syringe we are talking about?" Did you?

A Yes, I did. I talked about several syringes – I mean, I talked about the syringes.

Q You brought up the syringe to – for her to identify?

A No.

Q Okay. That's okay. Now, let's go back. You did not bring up the syringe for her to identify?

A Did I physically bring one to the jail?

Q Yes. Did you physically bring it to the jail?

A No, I did not.

Q And you were talking about what occurred that night on July 23rd? You were talking about [p. 129] that July 23rd incident?

A Yes.

Q And it was a very brief conversation?

A Yes, it was.

Q And it started by talking about David Young?

A Yes.

Q And in the process she starts talking about a syringe. Now, did she ever physically identify which syringe she was talking about to you? Did she ever say, "That's the syringe I'm talking about" and point at it?

A I just told you that I didn't bring it with me, so that would be impossible.

Q So she's talking about a syringe. Is it possible that maybe you were – that this was a very brief conversation and that there could have been some confusion about what was being talked about that day?

A No.

Q You don't think there is any chance that somebody could have been confused in a 10 minute conversation that started off talking about something else?

A I was extremely pointed with my questions. I went through it very detailed. I said, "You [p. 130] didn't get any of this from David Young? Nothing that was found in your possession that night came from David Young?" and, "it was all yours?" And she said, "Yes." "Nobody gave you those syringes? Nobody put them in there? They were all yours?"

Q Officer Peters, you – now, obviously – was there a tape recording of this conversation?

A No.

Q And is it, you know, when somebody is confessing, is it normally standard procedure to tape record it?

A I would have to explain that. But I would answer no.

Q It's not normally – you don't normally tape record confessions?

A This was not a confession. I was not anticipating obtaining any information from her. I went to gather intelligence about David Young, who I suspected of being a drug dealer. That's why it wasn't tape recorded.

Q On the piece of paper, which is the only thing I have that tells me about what occurred that evening, and this is a report you filled out. May I approach the witness.

I'll let you look at this report. Is this, [p. 131] in fact, the report you filled out concerning the incident?

A Yes, it is.

Q Okay. Now, you're taught in your training that these reports are very important, aren't you?

A Yes.

Q And, in fact, these reports have to be very accurate?

A Yes.

Q Okay, in this report it talks about the syringe, but you never identify which syringe she's talking about?

MR. BLONIGEN: Your Honor, I'm going to object. This is at least the third time that's been asked, and it's misleading as to the entire statement. He refers to the syringes in the plural, clearly, in the preceding sentence. I think, number one, he's answered this, and is has been asked; and secondly, I don't think it reflects the whole statement in the report.

THE COURT: I'll overrule the objection.

Q (By Ms. Sharum) Did you at any point state which syringe she was talking about at various times? In your report, did you write that down?

A What do you mean?

[p. 132] Q Did you, in the report, ever say, "While we were talking about the syringe containing 10cc's she said this"?

A No.

Q Did you ever say, "While we were talking about the syringe that contained 60cc's she said this"?

A No, not specifically.

Q Wouldn't you think that would be something that would be important to include in a report?

A Yes and no.

Q Okay. Now, she talks about – and you admit this was a conversation that occurred over approximately 10 minutes. Is there – you said that there's no chance she could have ever been confused about anything. You – you know the defendant so well that you know her state of mind when she was talking to you?

MR. BLONIGEN: Your Honor, I am going object to that. That's argumentative.

THE COURT: I'll sustain the objection.

(By Ms. Sharum) You stated earlier that you were very poignant with your questions, correct?

A Yes.

Q And she could not have been confused, [p. 133] correct?

A Yes.

Q And you know for a fact that there's no way she could have been confused?

MR. BLONIGEN: Your Honor, again he's answered these questions at least three times. It is repetitive, and it's simply argumentative. He's answered the question.

THE COURT: I'll sustain the objection.

Q (By Ms. Sharum) Now, when you first started this conversation with her, you started with generalities, didn't you, Officer? You started talking in general, and then you narrowed the focus as you went along; isn't that true?

A No.

Q You started off with very specific questions and went general, or did you start off with the general questions and go specific?

A I kept my questions very pointed throughout the entire thing.

Q You didn't start off by saying something like my name is Officer Peters, and I am here to talk to you about the night of July 23rd? You didn't start off with something like that as a basic introduction as to what was going to happen during [p. 134] this conversation so she would know?

A I may have said something similar to that.

Q So it started off talking in generalities about the evening, by pointing out what you were going to talk about?

A Yes.

Q Thank you. And then you went to more specific questions about syringes, right?

A Yes.

Q And eventually it went to specific questions about a single syringe that was found?

A Yes.

Q So you started off general and went to specific?

A Yes.

Q Now, you can say – now, as you got towards the end of these conversations, and you're asking very specific types of questions, you get down to one syringe. You are talking about a syringe?

A Yes.

Q And it talks about whether or not that syringe belonged to her, the single syringe?

A Yes.

Q Okay. But you freely admit that you didn't bring up the bag the syringes came in, to the Casper [p. 135] Police Department to talk about – just to make sure you knew which ones were being talked about.

MR. BLONIGEN: Your Honor, again he's answer that question three times. He stated that he did not physically bring the syringe to the Casper Police Department.

THE COURT: I'll sustain the objection.

MS. SHARUM: I have no further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. BLONIGEN:

Q Officer, you did use the singular, "The syringe," in this report, didn't you?

A Yes, I did.

Q But would you read the whole paragraph as I marked off between the two black marks there, and you had your report you finished shortly after this incident?

A Yes, "Houghton said that the liquid in the syringes was methamphetamine, and that she had found it while cleaning the house. Houghton went on to say that she had been packing Young's belongings for him and had found the syringe. Houghton said that she had kept the syringe and put it with her belongings. Houghton planned on using the [p. 136] methamphetamine herself."

Q Is the 10cc's really enough for a usable amount?

A Yes.

Q And the 60 is as well?

A Yes.

Q And during that conversation, then, you did – did she specifically indicate to you which syringe you were referring to as, the syringe?

A Yes.

Q Was there any doubt in your mind from your conversation which one she was referring to?

A No.

Q Which one was that?

A The one with the 60cc's in it.

MR. BLONIGEN: That's all the questions I have, Your Honor.

RECROSS-EXAMINATION

BY MS. SHARUM:

Q It says she was packing up Young's house. Did she give the first name of the person she was packing the house up for?

A David Young.

Q She said she was packing up David Young's house, not Johnny Young's house?

[p. 137] A She was packing up David Young's belongings from Johnny Young's house.

Q Now, you stated at the beginning that you started off with more generalities. You started off by saying that there was – you know, you start off by telling her – you were talking about that night, and you went to more specific questions.

Isn't the first part of that sentence you being general? You're talking about the syringes as a whole and then you start talking about the generalities of a syringe where you are more poignant?

A I guess in general, I said, "Is anything that the highway patrol found in your belongings that night someone elses?" "No," was what her response was. And I said, "Are you sure none of that came from David Young? He didn't give that to you or make you hold it for him while he talked to the police?" "No."

Q Now, would it have been important to have identified, while talking about the syringes, which syringe you were talking about in the report?

MR. BLONIGEN: Your Honor, again this is asked and answered. It is also beyond the scope of redirect.

[p. 138] THE COURT: I'll sustain the objection.

Q (By Ms. Sharum) In reading that paragraph, do you find that you start talking about the liquid in the syringes and then you go into, "I found the syringe?" Could she have mistakenly spoken and when meaning a syringe at the beginning, and then went to a more specific?

MR. BLONIGEN: That's speculative and it's argumentative. We've been over this ground three or four different times.

THE COURT: I'll sustain the objection.

MS. SHARUM: I have no further questions.

MR. BLONIGEN: We have nothing further for this witness, Your Honor. The State would rest.

THE COURT: Thank you. You can be excused.

THE COURT: Ms. Sharum.

MS. SHARUM: Your Honor, if this is the close of the State's argument, I would like to make a Motion for Judgment of Acquittal at this time.

THE COURT: Do you want to approach the bench.

(The following bench conference was had out of the hearing of the jury.)

THE COURT: Ms. Sharum, did you want to go ahead and make your motion now?

[p. 139] MS. SHARUM: Your Honor, I do not believe the State has proven the defendant actually was in possession of a controlled substance here. All they have shown is that she admitted to having one syringe. She has not admitted to any of this other evidence. And I think the evidence does not show she has admitted to any of the evidence indicated here.

MR. BLONIGEN: Your Honor, for one thing what she has admitted to had a total weight of 3.7 grams. That alone is enough – in fact, it's beyond what the State needs in this case. There's more than enough evidence. The jury can decide for themselves whether the full amount of evidence was hers.

MS. SHARUM: I would also state for the record that I think that the weighing of the syringe that contains the 10ccls is inaccurate. It was sent to the state crime lab, was not weighed and it should have been weighed. That's what their job is.

MR. BLONIGEN: Your Honor, and that goes to weight and it's not admissable. There's no doubt about the weight, and I can demonstrate that by the other syringe being weighed accurately.

THE COURT: It appears to me that there is sufficient evidence to allow the jury to decide the [p. 140] case, so I'll deny the motion.

MS. SHARUM: Your Honor, if I could have about five minutes to speak with my client to confirm whether or not she wants to take the stand.

(The following proceedings took place in open court, with the jury present.)

THE COURT: Ladies and gentlemen, we will be in recess for a few minutes.

(Off the record at 1:56 p.m.)

(The following conversation took place in the judge's chambers.)

MS. SHARUM: There are two issues which we need to take up. I would like a continuance, and we had a Motion to Suppress in which officer Peters testified. And I was told I could not have that suppression hearing transcribed by today. And I think that may now be needed in order to impeach him.

Briefly, I think I would like to have a continuance until such time as Mr. Bailey can do that transcript.

THE COURT: I don't think that would be practical at this stage, so I'll deny the motion.

MS. SHARUM: The other motion that I had objected to was the use of 404(b) evidence against [p. 141] my client, since Mr. Blonigen stated he would not be using that unless I put up a defense. The motion was not ruled upon, and I think it now needs a ruling.

MR. BLONIGEN: Your Honor, what she's referring to is the motion in the file. There are two separate cases, one in '88 and one in '89. One was a Delivery of a Controlled Substance. And a second case was Conspiracy to Deliver, and she pled guilty to both cases.

I filed a Conditional Notice of Prior Bad Acts, but I didn't know what the defendant's defense might be. And clearly, if the defendant wants to claim that she didn't

know this was methamphetamine, that would be admissible under Rule 404(b).

However, I would note that these were both felony convictions within a 10-year period, and that would be admissible for impeachment under Rule 609 as well, Your Honor. It depends, I think, on whether the defendant testifies or not.

A defense is put on if she claims a lack of knowledge of intent. I think they are admissible. A simple claim that it was not hers probably would not make it, as I understand 404(b) but it's spelled out under Rule 609.

[p. 142] Some – again, the questions that I intend to ask, at least at this point are, were you involved in Case No. – whatever case number, were you convicted for the felony of Delivery of a Controlled Substance on this date? The second count and its case number, and were you convicted of Conspiracy to Deliver Methamphetamine on this date?

If I am going to go further than that, I will approach the Court. It's very difficult for me to, as I put in the motion, to – I can't read people's minds. But I think under the circumstances I should be given some notice as far as my case goes, but if various defenses should come up, I can approach before going further than that. But until the evidence becomes obvious, I don't know if it's admissible under Rule 404(b), clearly it's admissible under 609 for impeachment purposes.

THE COURT: It appears to me, the convictions would be admissible for impeachment purposes and perhaps for other reasons. Do you know if she is going to testify?

MS. SHARUM: At this point in time, yes. We are planning to have her take the stand.

THE COURT: I would allow the prior convictions into evidence for impeachment purposes [p. 143] and perhaps for other reasons, depending on what she says.

MS. SHARUM: I would object to any 404(b) evidence brought in as evidence, as well as the details of the crimes or anything of that nature.

MR. BLONIGEN: Your Honor, I would also point out in her statements to DCI, she stated she used as much as half a gram a week, and she bought from David Young on over 20 occasions.

All these may become relevant if she testifies. I will not allude to them until I've approached the Court, but it seems to me that it's very difficult to tell the Court how we are going to use evidence, if we don't know what the defendant is going to say in this regard.

THE COURT: Well, I'll rule on those other issues after she gives her testimony-in-chief.

MS. SHARUM: Okay. Thank you.

THE COURT: Okay.

(The above proceedings, held in chambers, concluded at 2:07 p.m.)

(Back in the courtroom at 2:10 p.m. The jury is present.)

THE COURT: Ms. Sharum.

MS. SHARUM: If we could approach the bench [p. 144] briefly, I have a brief matter I need to bring up for the Court.

(Whereupon, the following bench conference was had.)

MS. SHARUM: I would like to make a motion that Officer Peters not be excused, I may want to recall him.

MR. BLONIGEN: He is just up in my office, Your Honor.

THE COURT: I take it he will be available?

MR. BLONIGEN: Yes. He's available.

(Back in open court, with the jury present.)

MS. SHARUM: The defense would call Sandra Houghton, Your Honor.

SANDRA HOUGHTON,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. SHARUM:

Q Would you please state your name for the record.

A Sandra Gay Houghton.

Q And spell your last name for the record?

A H-O-U-G-H-T-O-N.

Q And where do you live, Ms. Houghton?

A I live at 540 1st Street in Mountain View.

[p. 145] Q And as you know we're talking about the day of July 23, 1995. Why don't we start earlier in the day. Do you recall where you were about 2 o'clock that day?

A I was helping John Young and his wife move into their house and helping them clean up.

Q And you said you were helping them clean up. What were you doing over there?

A Packing up some things that belonged to their brother David and cleaning in general so they could move in.

Q Okay. And where were you cleaning in the house?

A I was cleaning in the back room which is – well, you go through the front door and down a hallway and into the back of the house.

Q And did you keep your purse with you the entire time?

A No, I left it in the living room.

Q Now, at some point in time you left that house, didn't you?

A Yes.

Q And how did you – how did you leave the house?

A Well, I was waiting for a ride to my mom's [p. 146] house, and they had happened to come by there, and I asked if he would give me a ride.

Q And what kind of car was David Young driving?

A It was a an older model Cadillac.

Q Two or four door?

A Two door.

Q And you got into that car?

A Yes.

Q And how did you – how did it proceed? I mean, how did you go towards your mother's house?

A We went down to McKinley and then onto the – we stopped at the McKinley Mini-Mart for cigarettes and then on to the interstate towards Evansville.

Q And when you stopped at the McKinley Mini-Mart, did you get out?

A Yes.

And what did you do?

I went in to get cigarettes and use the restroom.

Q And did you take your purse with you?

A No.

Q And at that time, you got back into the car after going to the Mini-Mart?

[p. 147] A Yes.

Q And where did you proceed from there?

A Onto the interstate and towards Evansville.

Q And at some point in time you were pulled over?

A Yes.

Q Who did the officer first approach?

A David Young.

Q And he said some things to David Young, did he not?

A Yes.

Q And do you recall what those statements were?

A I believe he asked him for his driver's license.

Q And did something happen next that you thought was different or unusual?

A Well, they searched him. I didn't know why they were doing that.

Q And did they search you at some point in time?

A A little later on, after they made us out of the car.

Q And did they search the car?

A Yes.

[p. 148] Q And do you recall them searching a person in the car?

A Well, I didn't see them actually start searching the person, but I was not near the car at that time. But when they called me over, yes.

Q And that was your purse?

A Yes.

Q Can you describe that purse?

A My purse is brown leather, and it had a broken zipper.

Q So it was open?

A Yes.

Q Where was the purse located in the car?

A The purse was located on the front seat, between Vanessa and I, on the floor.

Q Now, what name did you originally give the officer?

A Sandra James.

Q And why did you do that?

A Because I was thinking that if my daughter is listening to the scanner, I didn't want her to hear my name on it. And that's what I told the officer also.

Q And after the officer started searching your purse, did he approach you with identification?

[p. 149] A Yes, he did.

Q And what did he ask you about that?

A He asked me if it was mine.

Q And what did you say?

A I said, yes.

Q Did he later approach you with two containers that were in the car?

A Yes.

Q And the purse.

(The witness nodded her head.)

Q Okay. Would you describe those two.

A One was brown, a big brown – I don't know bag-type thing. And the other one was a black wallet type.

Q And what did you tell the officer at that time about those two items?

A I told him the brown one was not mine and that the black one was. I admitted that one was mine.

Q And you did that because you thought that was the right thing to do, just tell the truth?

A Basically.

Q Now, after that, were you arrested?

A Yes.

Q Okay. And did you know what happened to [p. 150] your purse immediately after that?

A No, I found out after I was in jail that it was left in that car. And I'd also – everything had been stolen out of it. I got the purse back but nothing else.

Q Now, you've heard that there were some statements made by you to an Officer Peters of the DCI?

A Yes.

Q Did you speak with Officer Peters on August 1, 1995?

A Yes, I did.

Q And did you talk with him about the evening of July 23rd?

A Yes.

Q And what did you tell him about syringes?

A I told him that there was a syringe in there that was mine. That, I admitted to.

Q And – and did you ever specifically identify which syringe that was?

A No.

Q And did you ever specifically say that the syringe that contained 60cc's – did you ever say anything specifically about that one?

A No.

[p. 151] Q Now, I am going to ask you some questions. You're not a saint are you, Ms. Houghton?

A No.

Q You have had some problems before, haven't you?

A Yes, I have.

Q Have you ever been convicted of a felony?

A Yes, I have.

Q And do you know approximately when that was?

A It was approximately five years ago, I believe.

Q Okay. And what was that for?

A It was for conspiracy and delivery charges, Conspiracy to Deliver.

Q And for what substance?

A Methamphetamine.

Q And you – you admit that you're not a saint. You've done things wrong in the past?

A Yes, I have.

And I would like to go back to Officer Peters' statement, and I am sure that Mr. Blonigen will bring this up. You stated that – Officer Peters stated that you had been using methamphetamine for the past eight years. Is that an accurate –

[p. 152] A No, that is not.

Q What did you –

A I did not say that I have been using for the past eight years, because I haven't.

Q What did you say?

A I said I had used off an on, but I had quit for a long time and just recently started again.

Q And it says here, you said you were Young's friend for approximately 20 years; is that accurate too?

A Yes. I've known the whole family for approximately 20 years.

Q So that part was accurate?

A Yes.

Q Okay. There was also some other parts of this. He talks about syringes. You said you never specifically identified any syringe?

A No, I didn't.

Q But you did to Officer Baldwin, didn't you?

A Yes, I did.

Q Okay. So you told officer Baldwin what you had done wrong?

A Yes, I told him specifically that the black purse was mine; the brown one was not. I don't know whose it was.

[p. 153] Q And do you know how it got into your purse?

A No, I don't.

Q Did you know what potential – I mean, did you know that by admitting to one or other that there would be any difference between what would happen to you?

A No, I didn't.

Q So you were unaware that by saying, "I did this wrong," something different could happen than saying "I did everything," and it would have a different penalty?

A No, I didn't even know what was in the other one until this started up.

Q Okay. Now, there's some other things. How long do you think the conversation between you and Officer Peters was?

A Approximately – maybe 10-15 minutes at the most.

Q And he originally came to talk to you about David Young, didn't he?

A Yes.

Q And so that's what you were originally talking about, was him?

A Yes.

Q You didn't realize you were really talking [p. 154] that much – did you realize what you were talking about that night specifically?

MR. BLONIGEN: Your Honor, she is leading this witness throughout this examination, and I am going to object at this point to the leading questions.

THE COURT: I'll sustain the objection to the last question.

MS. SHARUM: Okay.

Q (By Ms. Sharum) What was your understanding of the conversation? What was it going to be about with Officer Peters?

A My understanding is that he wanted me to say something about David Young, and then it went into what was in the specific bags or whatever you might want to call them, and what was – where they came from,

and where the syringe came from. And I didn't – and what was going to be done with them. And I did not say I was going to use it, because I wasn't going to.

Q Okay. And as you stated before, you didn't ever specifically identify which syringe to Officer Peters, which one –

A No, I didn't.

Q Did you do that with Officer Baldwin?

[p. 155] A Yes. I said the brown case was not mine.

Q Okay.

MS. SHARUM: I have no further questions at this time.

CROSS-EXAMINATION

BY MR. BLONIGEN:

Q Ms. Houghton, we have discussed three items that contained some liquid, and one was the syringe with 60cc's in it that was in the brown bag. Did you know that was there?

A No, I didn't know it was in the brown bag.

Q Then we had a syringe with approximately one-tenth of a gram or 10cc's, was that yours?

A Yes, it was. I admitted that.

Q And was the items within the vial yours?

A Yes. That was in my bag.

Q But you claim you didn't know the brown container was in your purse; is that correct?

A No, I didn't. My purse was unzipped in the front seat and between David Young – his girlfriend, and myself.

Q David Young is a friend of yours?

A I have known him a long time. I wouldn't say he was a good friend, but an acquaintance.

Q Twenty years?

[p. 156] A Yes.

Q Now, you said that you went into the Mini-Mart, got some cigarettes, went to the bathroom, got back to the car and shortly thereafter you were stopped by the police; is that correct?

A That is correct.

Q Did you notice anything unusual during that time period you were in the car after that point in time?

A No, because I was tired and kind of leaning against the door just waiting to get home.

Q Had you used methamphetamine that evening?

A No, I hadn't.

Q When was the last time you used methamphetamine?

A Before that incident. It was probably three days, two or three days, and I just hadn't used it.

Q Now, have you and Mr. Young ever had any personal difficulties?

A No.

Q And other than your purse, there was no other purse in the car, was there?

A I don't know if there was or not.

MS. SHARUM: Objection, Your Honor. I don't see what the relevancy of this line of questioning is.

[p. 157] MR. BLONIGEN: Well, Your Honor, if I can bring up some of the circumstances surrounding this as to credibility of the story she is giving today.

THE COURT: I will overrule the objection to the last question.

Q (By Mr. Blonigen) Neither yourself or the other people had coats on that evening, did they?

A No, I had my coat in my lap.

Q Do you recall – do you recall not having a coat, or do you specifically remember having a coat?

A I had a coat in my lap, and when I was asked to get out of the car, I left it in the car.

Q Mr. Young had no coat?

A I don't know. I wasn't paying that much attention. I was just getting a ride home.

Q So if someone else put this in your purse, they had to do it without your knowledge, before there was ever any sign of trouble with the police; isn't that true?

A Not necessarily, no. Because, like I said, I was half asleep waiting to get home to my mom's. They woke

me up when we came to Johnny Young's house, and that's when I asked for a ride home.

Q Where was your purse?

A When?

[p. 158] Q When the police stopped you.

A On the floor, between Vanessa and myself.

Q How did it end up in the back seat then?

A It was not in the back seat.

Q The officers just made that up?

A Either that or – he also said it was a cloth purse, and it was not. It was a leather purse.

Q And you made some references to your past record. But these are actually two different cases, aren't they? Case No. 10834, you were convicted of Delivery of a Controlled Substance, Methamphetamine; isn't that correct?

A Yes, it is. And I did spend time.

Q And in a separate case you were convicted in a completely different case of Conspiracy to Deliver Methamphetamine; isn't that true?

MS. SHARUM: Objection, Your Honor, these questions have already been asked and answered.

MR. BLONIGEN: Your Honor, I think it should be clarified, these are two separate felony convictions and not one, as might have been indicated by Ms. Sharum's questions. They are out of separate incidents.

THE COURT: I'll overrule the objection.

[p. 159] MS. SHARUM: We will stipulate to that, Your Honor.

Q (By Mr. Blonigen) Now, you stated that you gave a false name to the officer; is that correct?

A Yes, I did.

Q Because you were afraid of what might happen?

A No, that is not what I said. I said that I did not want my daughter to hear my name over the scanner. And that is my words exactly.

Q And again, he has simply got that wrong?

A I believe so.

Q When the police contacted you in their conversations, in fact, you had already been attempting to contact the police; had you not?

MS. SHARUM: Objection, Your Honor, the relevancy of this?

MR. BLONIGEN: Your Honor, she is quite aware of what was going on there, and the fact that she somehow was confused at this interview is pretty ridiculous. And we can show that by the preceding circumstance.

MS. SHARUM: Your Honor, may we approach the bench.

THE COURT: I'll overrule the objection.

[p. 160] You can go ahead, Mr. Blonigen.

Q (By Mr. Blonigen) You have been attempting to contact Officer Bergen at the Casper Police Department?

A Yeah, I have. Because he is a friend, and as a friend only. Not for any other reason that I tried to contact him.

Q Didn't you speak to him?

A Yes, I did.

Q Didn't you offer to act as an informant at that time?

A No, I did not.

MS. SHARUM: Objection, Your Honor.

THE COURT: I'll overrule the objection.

Q (By Mr. Blonigen) After Mr. Peters talked to you about David Young and what had gone on, did you attempt to contact him after that?

A I did.

MS. SHARUM: Objection, Your Honor, to the relevancy of this. Again, I don't think it's relevant.

THE COURT: I'll overrule the objection.

Q (By Mr. Blonigen) That was also to tell him about drug trafficking in the Natrona County area?

A Yes, I had been threatened that if I did not [p. 161] talk to them, I would go to prison, because I had a daughter old enough not to depend on me, and I was scared.

Q You're saying they threatened you?

A That is who – they said, "If you don't say something, you will go to prison on that."

Q You didn't mention that when Ms. Sharum was talking to you?

A I did too. I wrote it down.

Q Just now?

A Uh-huh.

Q And you didn't mention it – when Officer Baldwin testified, he said that you said it wasn't yours. You never told Mr. Baldwin, "I don't know how it got there," did you?

A No. He didn't ask me how it got there.

Q And when you talked to Agent Peters, you never told him anything about people putting things into your purse, did you?

A No. He didn't ask me that either. I just said that it wasn't mine.

Q Didn't he ask you if it came from any other place, other than being in your own?

A The specific brown purse?

Q No, the items in the purse.

[p. 162] A The items in the purse. The black one, yes, was at David Young's house. The brown one, I don't know where it was. And the black one was there. It was mine, and it was there.

Q And you saw the officer remove the brown items; is that correct?

A Yes.

Q But by the time you talked to Agent Peters about this incident, you told him that everything in the purse was yours?

A In the black purse, yes. I also said I didn't know whose the other was –

Q And again –

A – or where it came from.

Q Again, he is mistaken about that?

A No, I didn't say he was. I just said all this stuff in the purse was mine. But not – not the brown purse.

Q And those aren't purses at all. The black item is your wallet, isn't it?

A Well, yeah.

Q So when you said everything in the purse, you meant everything in the large purse?

A No, I didn't. I stated right then and there when I was arrested that that one is not mine.

[p. 163] Q During this time period, did you ever tell Agent Peters anything about – when you spoke to him and told him what happened that night, did you ever suggest to him that someone else had planted these items in your purse?

A No, I didn't, not that I know of. He didn't ask me anything about that, whether they had or not.

Q And you didn't bring it up?

A I just told him I didn't know whose they were, because it wasn't mine.

Q You knew it was part of your charges; didn't you?

A At that time I wasn't too sure what my charges were. I had gone to court for felony possession.

Q You were provided with a copy of the affidavit at that hearing; were you not?

A Not yet, I hadn't been served.

Q You were served with it at your initial appearance in county court. They gave you a piece of paper with the officer's version of what he found on you and what was going on; isn't that right?

A I had – I received a piece of paper that had, like, two small paragraphs on it.

Q And you received that prior to your [p. 164] interview with Mr. Peters on August 1st, didn't you?

A I think so. I am not sure.

Q And your initial appearance on July 24th?

A I am not sure if I got it then or got it sent to me later on. I don't think I had it then, I think I got it later on, when I was going to settle.

Q And it stated clearly that one of the items in the brown bag with the paraphernalia was a syringe loaded with 60cc's; is that correct?

A I did not get a copy of that.

Q Ma'am, you were served with that in open court.

A No, I wasn't. I will have to say no, because all I got was a typed-out version with Count I and Count II on it.

Q Had you ever had any contact with Agent Peters before?

A Before this?

Q Yes.

A No.

Q Had you ever had any difficulties with Mr. Young or Ms. McQueery?

A No difficulties. I just, you know, they're not somebody I hang around with all the time.

[p. 165] Q Okay. Now, you indicated that you were convicted of delivery of methamphetamine. Why would anybody put drugs in your purse when there was no threat from the police or any other person –

MS. SHARUM: Objection.

MR. BLONIGEN: – for what reason?

MS. SHARUM: Objection.

A I have no idea when it happened.

MS. SHARUM: Your Honor, I object to this line of questioning.

THE COURT: I'll overrule this line of questions.

A And my conviction of delivery was five years ago, and since then I have not done anything like that.

Q (By Mr. Blonigen) Since – you have not done anything like what?

A I don't mess around with methamphetamine a lot. I don't deliver. I haven't done anything to that point.

Q Do you recall being interviewed by agent Peters about that?

A After I was jailed?

Q Yes.

MS. SHARUM: Asked and answered, Your Honor.

[p. 166] THE COURT: I'll overrule the objection.

MR. BLONIGEN: Your Honor, may we approach briefly.

(The following bench conference was had out of the hearing of the jury.)

MR. BLONIGEN: The defendant has stated on the witness stand that she rarely uses methamphetamine now, and I would refer the Court to the paragraph in her statement that I am pointing at, at this time.

Given her answer here, I would like to cross-examine on that. But I will not do that unless the Court rules it is admissible.

MS. SHARUM: Your Honor, this is 404(b) evidence and I think it's inadmissible. It is highly prejudicial. And she's already stated she isn't delivering anymore.

MR. BLONIGEN: She also stated that she doesn't mess around with methamphetamine much anymore, and I think that contradicts her statement here, and I should be able to use it for impeachment purposes.

THE COURT: I'll overrule the objection.

(The following proceedings are held in open court, with the jury present.)

[p. 167] Q (By Mr. Blonigen) And so you can give us no reason why anybody would put that in your purse?

A I don't know why, no.

Q You stated earlier that you had only used methamphetamine occasionally recently; is that correct?

A Yes.

Q Do you recall telling Agent Peters that you had a methamphetamine habit of approximately one half gram per week?

A No, not for a week. I couldn't afford that if I did.

Q Did you make the statement to him?

A I don't believe so.

Q So, somebody just for some unknown reason put this in your bag and you had no idea –

A I don't know when it could have happened, when the lights came on or what. Because, like I said, I was leaning against the door half asleep waiting to get home, I don't know. It could have happened when I was in the Mini-Mart and it could have happened when I was cleaning house.

Q But you do readily admit that this smaller syringe or the syringe with the lesser amount in the vial were yours?

[p. 168] A Yes, it was in that black bag. That was mine.

MR. BLONIGEN: That's all the questions I have, Your Honor.

REDIRECT EXAMINATION

BY MS. SHARUM:

Q Ms. Houghton, why did you admit to having the black bag?

A Well, it was in my purse, and it was mine. So I admitted to it.

Q Why did you not admit to having the brown bag?

A Because it was not mine, and to my knowledge it was not in my purse.

Q So you just admitted then to this, why?

A Pardon me?

Q Why did you make these statements?

A Because they were true.

MS. SHARUM: No further questions, Your Honor.

MR. BLONIGEN: I have nothing further, Your Honor.

THE COURT: Thank you. You may resume your seat.

THE WITNESS: Okay.

[p. 169] MS. SHARUM: May we approach the bench again.

(A bench conference was had out of the hearing of the jury.)

MS. SHARUM: What I would like to do is call Officer Peters, but without the transcript of the motion hearing, I don't feel I have that option. If you rule that I have to proceed today – and that is my understanding of the ruling – I would need a continuance for the transcript.

THE COURT: I think you should proceed.

MS. SHARUM: Okay. And for the record I object to that, just so it's on the record.

MR. BLONIGEN: Okay.

(Back in open court, the jury is present.)

MS. SHARUM: The defense rests, Your Honor.

MR. BLONIGEN: Your Honor, we would have very brief rebuttal from Agent Peters.

CHRIS PETERS,

having previously been sworn to tell the truth, testified as follows:

REBUTTAL

DIRECT EXAMINATION

BY MR. BLONIGEN:

Q Do you recall, Mr. Peters, you're still [p. 170] under oath?

A Yes, I do.

Q Agent Peters, have you been present during the defendant's testimony?

A Most of it, yes.

Q When you spoke to the defendant you prepared report, didn't you?

A Yes, I did.

Q And how did you prepare that report? What did you use?

A I took notes during the initial interview, and I typed it from my notes.

Q Now, is there anything in your report that was not in your notes – or anything in your notes that's not in the report?

A No.

Q When was that prepared?

A On the 7th of August, 1995.

Q And is this a copy of that report?

A Yes, it is.

Q Did you ask the defendant about her frequency of methamphetamine use?

A Yes, I did.

MS. SHARUM: Objection, Your Honor.

Q (By Mr. Blonigen) Did she describe it for [p. 171] you?

A Yes, she did.

MS. SHARUM: Your Honor, I am objecting to this line of questioning. If I may approach.

THE COURT: I'll overrule the objection.

Q (By Mr. Blonigen) What did she indicate her level of consumption was?

A She said that she used about a half a gram of methamphetamine a week, and she had been a user for about eight years.

Q Okay. Now, what you put in there – as you described earlier today, you were very pointed in your conversation with her. Did she ever indicate to you that anybody had placed the brown container in her purse?

A No.

Q Again, you testified earlier that you had very pointed questions with her, and I won't go over those again, but was she clear in her questioning to you that all of the items in the purse were hers?

A Yes. I specifically asked her if everything was hers and she said that it was.

Q And when you use the term "purse," was there ever an indication that you were referring to anything other than the larger purse involved?

[p. 172] A No, I said everything. I said the syringes the spoons, everything, is that yours? And yes, it was.

MR. BLONIGEN: That's all the questions I have, Your Honor.

CROSS-EXAMINATION

BY MS. SHARUM:

Q The interview occurred on August 1st; correct, Officer Peters?

A Yes.

Q And you filled out the report on August 7th?

A That was the date it was approved.

Q Okay. When you went in there, you talked with her. Where – I mean, I am looking at this – I am looking at this report, and I think you've seen this report. There's no indication where you say, "Houghton said everything in the purse was hers."

You talk about syringes and the syringe, but at no point do you say, "I asked Houghton if everything in the purse was hers, and she admitted to it." Don't you think that would have been something that would have been appropriate to stick in this report?

A Yes and no.

Q You left that out of the report, didn't you?

A Yes.

[p. 173] Q And you left out – you left out – you left out other things in the report, didn't you? Other questions you asked? Other answers you received?

A For instance?

Q Well, you admitted to leaving out the fact that you asked her the question, "Is everything in that purse yours?" And her saying, "Yes." You left that out of the report? You didn't think that was something important?

A Yes.

Q Okay. Isn't it true that Ms. Houghton told you that she used methamphetamine off and on for the past eight years?

A From the time she first used it until the time she was stopped by Officer Baldwin, she continually used methamphetamine. I don't know what you mean by off and on.

Q Didn't she tell you she used it off and on for the past eight years? And you wrote it down that she used it for eight years?

A Yes.

Q And isn't it true that – isn't it true that – that, she was – that you had talked with her – when you talked with her about the bags and the containers, that you were unclear about what was [p. 174] going on, and she did not understand you?

A No.

Q You, you, you, you, you know for a fact that – you know exactly what she was thinking? You know for a fact that you were not unclear?

MR. BLONIGEN: Your Honor, this is as argumentative this time as it was last time. I renew my objection.

THE COURT: I'll sustain the objection.

MR. BLONIGEN: Just one question, Agent Peters. You did not put everything she said in that report?

A Excuse me, I thought you were finished.

Q (By Ms. Sharum) No. We have talked a little bit about that you were aware that Ms. Houghton was on probation?

A Excuse me. I didn't hear the question.

Q You were aware of Ms. Houghton's prior convictions; were you not?

A No, I was not.

Q You were not aware of them?

A No.

Q Are you aware of them now?

A Yes.

Q Okay. During that time in which she was [p. 175] previously convicted, do you know of any incidents where there was any sort of indication of her taking drugs?

MR. BLONIGEN: Your Honor, I am going to object, unless there's foundation for personal knowledge on the part of the witness.

THE COURT: I will sustain the objection.

MS. SHARUM: I have no further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. BLONIGEN:

Q You didn't put everything down in your report, did you?

A No, I didn't.

Q Do you have a clear memory of this conversation however?

A Yes, I do.

MR. BLONIGEN: That's all the questions I have, Your Honor.

RECROSS-EXAMINATION

BY MS. SHARUM:

Q This conversation took place approximately three months ago; is that correct?

A August 1, 1995.

Q So it would be August, September, October, [p. 176] so approximately three months ago?

A We're now into November.

Q Okay. So approximately three months?

A Yes.

Q And you have conducted several interviews since then; have you not?

A Yes.

Q Okay.

MS. SHARUM: No further questions.

MR. BLONIGEN: I have nothing further for the witness, Your Honor. The State would rest on any further rebuttal.

THE COURT: Thank you. You can be excused.

Ladies and gentlemen the law requires that the attorneys and I meet now to discuss the instructions on the law which will be given to you.

Do you want to proceed this afternoon or bring the jury back tomorrow morning?

MR. BLONIGEN: We're prepared to do whichever the Court would like. It's about 3 o'clock. We are prepared to proceed, if the Court would like to do that or do it in the morning.

MS. SHARUM: The defense is prepared to proceed, or if you would prefer to wait until tomorrow morning.

[p. 177] THE COURT: How long do you think it will take for instructions?

MR. BLONIGEN: Half hour to 45 minutes I would say, approximately.

MS. SHARUM: I would estimate the same amount of time, Your Honor.

THE COURT: Perhaps, so we don't keep the jury waiting around this afternoon, it might be easier to have you come back tomorrow morning at 9 o'clock and proceed with the instructions, the final arguments, and the deliberations.

So we will be in recess until 9 o'clock tomorrow morning.

(The court was in recess at 2:45 p.m.)

STATE OF WYOMING Plaintiff, vs. SANDRA HOUGHTON, Defendant.	)	Seventh Judicial District Natrona County, Wyoming Criminal Case No. 12880

OFFICIAL COURT REPORTER'S
CERTIFICATE OF COMPLETION

(Filed May 20, 1996)

BE IT REMEMBERED that the Original of the Official Court Reporter's Transcripts of the Proceedings in the above-entitled matter was filed with the Clerk of the District Court of the Seventh Judicial District of the State of Wyoming on MAY 20, 1996; pursuant to Rule 2.06 of the Wyoming Supreme Court Appellate Rules, effective November 1, 1992.

This Certificate notices the Clerk of the Wyoming Supreme Court and counsel (or parties) of record of that filing in the trial court; that copies of this Certificate are being mailed to the Clerk of the Wyoming Supreme Court and all counsel (or parties) legally interested in this proceeding thus transcribed and filed herein.

Dated this 20TH day of MAY, 1996.

/s/ Sara C. McDowell
SARA C. McDOWELL,
Official Court Reporter
Seventh Judicial District
State of Wyoming

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT

Criminal Action No. 12880

STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

THE STATE OF WYOMING,)
Plaintiff,)
v.)
SANDRA HOUGHTON,)
Defendant.)

COURT REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Filed May 20, 1996)

VOLUME II (II OF II)

BE IT REMEMBERED that the above-entitled matter came before the HONORABLE DAN SPANGLER, a Judge of the Seventh Judicial District of Wyoming, in the District Courtroom, Natrona County Courthouse, Casper, Natrona County, Wyoming.

PROCEEDINGS:

JURY TRIAL: November 6 and 7, 1995.

PROCEEDINGS REPORTED BY:

Sara C. McDowell
Official Court Reporter
Natrona County Courthouse
Room 237
Casper, Wyoming 82601
(307) 235-9255

[p. 178] TUESDAY, NOVEMBER 7, 1995,
MORNING SESSION, 8:50 a.m.

PROCEEDINGS

(The following proceedings take place in the courtroom. Neither the Jury or the Court is present at this time.)

OBJECTIONS TO INSTRUCTIONS

BY MS. SHARUM:

I object to the failure to give the instructions for lesser included offense, citing *Driscoll v. State*, 761 P.2d 980 Wyoming, 1988, which sets out the standard for the giving of a lesser included offense.

Lesser included offenses should be given when a proper request is made when the elements of the lesser included –

(The reporter requested that Ms. Sharum slow down.)

MS. SHARUM: The Court stated that the lesser included instruction should be given when proper request is made, when the elements of a lesser offense are identical to the elements of the greater offense, and evidence was sufficient to justify conviction of a lesser offense.

Proof was sufficiently in dispute in differing the two offenses to allow the jury to [p. 179] consistently find the defendant innocent of the greater offense and guilty of the lesser offense. And that either the State or the defendant could request the instruction.

What is disputed in this matter is the weight of the methamphetamine, and I believe it is disputed to the extent that a lesser included instruction should have been given.

I would also like to object to the failure to give the instruction on the presumption of the law being given in favor of my client's innocence. And I believe this instruction clarifies the other instructions more clearly and should have been given.

I object to the instruction that a witness does not have to produce any evidence on the question of guilt or innocence.

In this case the only witness called was the defendant. And no other evidence was produced and I believe that this would have been an appropriate instruction to have been given.

I object to the instruction of – the instruction that the defendant – that this type of case creates a strong prejudice against the accused, and you must bare in mind the difficulty of the [p. 180] defendant's defense – that this is a very difficult defense in which to defend to.

I object to the failure to give the instruction that the police officers should be given no more credibility than any other witness. And I believe that in this case where most of the witnesses other than the defendant and the state crime lab person were police officers; that this is important for the jury to understand that the police officers' testimony is given the same weight as anybody else's.

I object, again, to the verdict form produced by defense counsel not being given, and this includes the lesser included offense which was stated about that objection for that not having been given.

MR. BLONIGEN: One objection, with regard to the failure to give the lesser included offense on simple possession, and as I noted in chambers yesterday, she has an appropriate lesser included offense only if there's evidence to support it.

However, as the State pointed out in the instructions in conference that the defendant herself while on the stand, admitted that two of the containers were hers, and she knew they were there. [p. 181] The total of those two containers, by uncontradicted weight testimony from the officers and crime lab, were that the two items combined equaled .37 grams, therefore, exceeding the felony weight amount.

Based upon that, the judge ruled that there was not competent evidence to support the giving of the lesser included offense instruction. Even though simple possession is, in fact, a lesser included of felony possession of methamphetamine.

(Whereupon, the following proceedings commenced at 9:02 a.m. with the jury present.)

THE COURT: Ladies and gentlemen, it becomes the duty of the Court to instruct you on the law applicable to this case. It is your duty to follow the law as stated in these instructions.

(The Court reads the instructions to the jury at this time.)

THE COURT: Do you wish to make a closing statement, Mr. Blonigen?

CLOSING STATEMENT

BY MR. BLONIGEN:

Thank you, Your Honor. May it please the Court and counsel.

Do you have any doubt, any reasonable doubt, that this person possessed more than three-tenths of [p. 182] a gram of methamphetamine?

What's apparent in this relatively short trial is that, almost all the facts in the main case are agreed to. There's arguments about details, but there's no doubt, and hasn't been any argument, that this defendant possessed the drug. There's no doubt it's a controlled substance, and that it took place on July 23rd, in this county.

What the defense has disputed throughout this case is whether she knowingly possessed all that drug. She admits she knowingly possessed, at least the items in the black wallet. But she claimed she did not know the items in the brown bag were there in the small brown container that looks like a shaving kit.

But ladies and gentlemen, therein lies the heart of this question, because that is not necessary for your determination. The items she admitted to were over the threshold bounds, which we will discuss in a moment.

But before we discuss that, let's just take a look at this. It's very understandable why the defendant does not argue with the fact, that she, in fact, possessed these

drugs, she just claims she didn't knowingly possess all of them.

[p. 183] The drugs are found in her purse, with her identification. No other person's identification. No indication that anybody else had messed with the purse. There's no movements inside the car when the officer's pulling them over or anything like that. No one else's personal effects were found in the purse.

The defendant knew they were there. One of the best ways we determine that is that she gave a false name. Remember that? She gave a false name to the officer. She said she didn't have an ID, even though the officer found it in her purse. She knew she was in trouble if he searched that purse.

And, in fact, she later said, I told you a false name in case things get bad. Well, she knew things were going to get bad. Because one person knew more than anybody, and that was her, that there were drugs in that purse.

And he goes to the purse itself, and when he pulls out the brown container she doesn't say, "Gee whiz, what is that?" Her statement is, "That's someone else's." And he asks, "Whose?" Well, hem and haw, she's not going to tell him that, or I can't tell you that, words to that effect.

The officer continues and searches the car, [p. 184] finding all those items, ladies and gentlemen. And there is no indication that anyone else put them there, or had control of the purse. And we will talk about the defendant's statement in a little bit.

But if you look at those facts themselves, they establish guilt beyond a reasonable doubt that she was in

possession of all these items. Consider also the syringes are identical. Now true, other people can buy them. But, it seems almost a leap of reason to say you're going to find exactly the same syringes when somebody – I mean, the drug fairy or whoever put those drugs in the purse for the defendant, they just happened to have the exact same sort of syringe.

Did you remember the officer's testimony on the bindles, the small containers that the powdered substance was in? They were identical. So now our person not only has to put drugs in her purse for some unknown reason, but they happen to have identical syringes. They happen to have identical bindles, and they happen to put, not only these in there, but all the other paraphernalia associated with using the drugs. All that was in the purse.

That is fundamentally unbelievable, ladies [p. 185] and gentlemen, that somehow this unknown person, for an unknown reason, would just put all this stuff in her purse, and they all happened to match.

The judge has instructed you, in the first instruction he read you, that you're not to speculate on the evidence, but only draw fair inferences from it.

What is a fair inference from all the circumstance you see right there? That is that she's guilty beyond a reasonable doubt. What is speculation? That somehow, some person, for unknown reasons, at an unknown time, adds these things to her purse.

Let's not forget, she's only saying part of them are a surprise to her, the rest she knows about. Again, she

doesn't tell the officer, "What's that?" She knows immediately what's in there. The State doesn't need to prove to you who owned that. They need to prove to you that she possessed them.

The Court has informed you, through its instructions, that ownership is not part of this case. How did she – if she didn't know what was in there, how come she made the statement to the police officer?

Remember the police when they talked to [p. 186] her – and we alluded to them several times in the testimony – they made affidavits and notes, and it was all right at the time. Not a story that comes after hearing all the other evidence, but those items were recorded at that time.

And on August 1st, Agent Peters talks to her. He talks to the woman who's been trying to contact the police – who actually contacted them afterward, and who wants to act as an informant.

She says, in response to a very pointed question – and let's remember here, she is watching Officer Baldwin take that stuff out of her purse the night before, remember that?

There can be no confusion in her mind as to what Officer Peters was referring to, and you heard him read it directly from the report. He did shortly thereafter.

"All of it's mine. All of the syringes are mine. Yeah, that syringe is mine." She said that during the conversation, and she's referring to the large syringe. She says, "All those things are mine, nobody else gave them to me. Nobody else put them in my purse."

There was no story about, somebody must have put that in my purse. No, that's not the comment. [p. 187] That's not the statement. And, yes, it was not tape recorded. Just as somebody might ask you to write a statement about what happened here these last two days. Well, you wouldn't have it down word for word, but you know what happened here the last two days. And you remember the conversation.

It was only three months ago, which is not that long ago. And they never showed any reason as to why Agent Peters' testimony would be inaccurate. In fact, the defendant has every motive to be forthcoming with that, because she wants to act as an informant.

She doesn't want to lie to the officer and have him find out later and be angry or upset with her. So she has a motive for being more forthcoming the next day. And it's not inconsistent with what she told the officer.

And perhaps the most interesting thing is – and we'll talk about the statement in a minute – but that is that the weight element, which they wish to dispute, is largely undisputed. There was never one question during impeachment, cross-examination or in any other manner challenging the weights.

The officers obtained the weights immediately after the arrest or the state crime [p. 188] lab. That is uncontradicted evidence in this courtroom, ladies and gentlemen.

When you look at this – and this has some additions which I will explain in addition to the exhibit presently in evidence.

You look at these. These are the state crime lab – they did not weigh the one, remember the smaller syringe. They did not weigh that. They simply designated a resin and tested it.

And this is the amount they received from the agency of the drug and the solution itself. And this is what they returned. Because a small amount of that drug is consumed in the testing process, and that's what you see here.

What did the officers do that day? Well, they took an identical syringe, the packaging material in this case, as you've heard in the instructions, and weighed an empty one that is identical.

They then weighed one with the suspect liquid in it. It turned out to be a solution of methamphetamine. They came up with five-tenths of a gram on their scale that, again, the weight was never contradicted in the testimony. Which is exactly the same as what the crime lab came up with, [p. 189] one-one-hundredths, five-tenths of a gram.

They weighed this one the same way, a tenth of a gram. Remember this one? This one is the one in the black wallet that the defendant admitted was hers. This is also uncontested.

The officers noted 20 to 30cc's in this vial that the defendant admitted was hers, .27 grams. So the interesting thing is, is why they were busy trying to fight off this other syringe.

Apparently nobody did the math. Three-hundredths – or three-tenths of a gram is what's required in the

statute. These two items are uncontradicted in the testimony.

And more than that now. While we were talking about this other syringe, nobody did the simple addition of adding this up. And the tests also are corroborated another way.

You will notice that in 60cc's minus the small field test, we have five-tenths of a gram by both the lab – and you'll notice roughly a tenth of a gram for every 10cc's, which is exactly what we come out with here. And this vial is between 20 and 30cc's. You have the same thing.

So despite the overwhelming evidence in fact, this last syringe is hers, it's not [p. 190] necessary to the case. There is no issue here about the weight.

The defendant wants to make an issue about the weight, after she finds out there is a problem for her. It's not a problem for her when she's talking to Delane Baldwin. It's not a problem for her when she's talking to Mr. Peters. But as things go down the road here, and the case developed, and the possession is overwhelming, and they are trying to get out of this three-tenths-of-a-gram situation what do they do? Well, we will get rid of one of the syringes.

But that does not save them. It doesn't save them under the law. There's never been any doubt in this whole case about the weight assigned to these drugs. But moreover, ladies and gentlemen, there's no evidence, credible evidence, that that was not hers and the other not.

We've already talked about the physical circumstances surrounding the case. How possession was proved by the physical circumstances themselves. She was absolutely adamant with Agent Peters that nothing, nothing was in there that was not hers. All the syringes, all the paraphernalia, all the drugs were hers. She was going to use them.

[p. 191] In fact, that is corroborated by the physical evidence of the – remember the recent track mark on her arm.

Reasonable doubt isn't created by the defendant's testimony. It would be easy for defendants within our system if all they had to do is get up on the stand and say, "I didn't do it." That's not reasonable doubt.

The Court has instructed you that if you believe any witness in this case has willfully or falsely or corruptly sworn falsely, you can disregard any of their testimony, unless it's corroborated by other evidence.

As a juror you can pick which evidence to believe and not to believe. The question you must answer is whether the essential elements are met beyond a reasonable doubt. In this case the knowing possession of more than three-tenths of a gram of methamphetamine.

Let's consider credibility for a moment. You know, people testify falsely for their own reasons. They might have a motive. They might simply be wrong. They didn't perceive the item accurately. Or they might have a particular bias in a case, such as a relative or something like that.

[p. 192] Well, the defendant has an obvious bias in this case. She is the one on trial. In addition to that, the defendant has twice before been convicted of felony offenses involving methamphetamine.

Now, she's not guilty of this one because she did it before. But you can consider that in judging the credibility of her testimony. The law has long recognized that those individuals who are previously convicted felons aren't always the most credible witnesses, and you can use it for that purpose to determine whether she is, in fact, credible.

Consider this then. The defendant would have you believe that she's cleaning a house at 1 o'clock in the morning, and that she decides to go visit her mother. And in deciding to go visit her mother, she is taken there by Mr. David Young, a long-time friend.

It's interesting in her testimony – I don't know how 16-year-old Vanessa McQueery ever got in the car, because she certainly never described it. She doesn't describe any unusual movements within the vehicle itself that would account for somebody placing these items in her purse.

It's totally inconsistent with what she told [p. 193] Agent Peters just a week after the offense. And then she says she's getting a ride home. She testified on the stand that her home is in Mills. What's she doing going to Evansville? Do you remember her testimony? She told you where she lived. She lived in Mills. What's she doing going to Evansville?

Regardless of all that, there are obvious problems with her statements. She never explains to you the presence of all the matching paraphernalia in the purses. She never explains why any of these people in the car would do anything – David Young is a friend of 20 years – or that they had access to anything.

She tells you – you know, she leaves out these little things like, "Well, my purse could have been over here or over here." There's no evidence that anybody put anything in her purse. Remember the judge's instruction.

Again, that would be speculation, not a reasonable inference based on the evidence. And suddenly the purse, which was found on the back seat by the officer's testimony – and which was corroborated by the reports he made at the time is now in the front seat.

[p. 194] She says, "I left my purse in the car when I went into the Mini-Mart." Well, if she did that, she had to get money out of her wallet, didn't she? Because there was nothing on her, absolutely nothing on her when the police searched her after the arrest or during the pat-down.

So where did she get the money? Out of her purse. What's in the purse? The brown bag. All these problems with her testimony, ladies and gentlemen. She then says, "Well, I was tired. I didn't watch what was going on." Her attorney implies that Officer Peters is mistaken, and that somehow she misunderstood her client.

On the other hand, what the defendant says is that this officer lied; that Officer Peters lied. For what reason? Their observations were largely contained in notes that

were taken months ago. Yet she wants to say she can come in here, and she can discard their evidence and say, "You got to believe me. That's reasonable doubt, because I got on the stand."

The judge has told you if you believe any witness swore falsely on that stand to any fact, you are at liberty to disregard the rest of their testimony.

[p. 195] A defendant can't find reasonable doubt simply by denying the accusation. Ladies and gentlemen, we have been engaged in a giant smoke screen here.

What does the defense want? They want you to ignore the law. They want you to say whether it's sympathy for the defendant because of her drug problem. And if you have sympathy for her drug problem, that's fine. That's not a bad thing. But we're here to determine a fact. And that fact is whether or not she possessed three-tenths of a gram or more that night.

The overwhelming evidence is that she possessed at least that much. And quite frankly, ladies and gentlemen, there is no credible evidence that she didn't possess this whole amount, which is almost three times what is required by the statute.

When the evidence is uncontradicted, the defendant has been given their right to a fair trial; to a presumption of innocence; to proof beyond a reasonable doubt. But they're not entitled to acquittal simply because they get on the stand and give some half-baked story that would somehow explain only a portion of it.

That doesn't mean she isn't liable for what [p. 196] she admitted. It doesn't mean you have to believe her, and it doesn't mean she is credible.

The overwhelming evidence is that she possessed it in the necessary amount. And now she simply wants to avoid responsibility for her actions.

Your verdict will hold her responsible for her actions. She will be held responsible for what she did. Not anything less, not anything more, simply what the law says: She knowingly possessed more than three-tenths of a gram of this liquid.

THE COURT: Ms. Sharum.

CLOSING STATEMENT

BY MS. SHARUM:

I'm a little bit more nervous so I am going to use the podium, so I have something to stand behind.

I am not asking you to ignore the law. In fact, I want you to pay very close attention to the law. I am not asking that in any way.

And Mr. Blonigen made a lot of statements. And some of them he made, he said my client lives in Mills. That's true. Why was she going to Evansville? Well, she testified why she was going Evansville. She's going there because that's where [p. 197] her mother lives. She was going to her mother's house. She testified to that. That's why she was heading in that direction.

They said, What was she doing cleaning house at 2:00 – 1:00 in the morning? She testified that she got there at

2:00 in the afternoon to help somebody pack up their house and help them clean it.

There's nothing wrong with doing that, and it ran late. And she needed a ride home, and she So she just waited around. And she was tired. It was 1:00 a.m. She was sleepy. And she wasn't paying attention to what was going on in the car. She was leaning against the door, just kind of half-dozing. She was not paying any attention.

Now, whether or not she had to dig into her purse to get some money out –

(The reporter asks Ms. Sharum to slow down.)

MS. SHARUM: I carry a lot of my money in my front pocket. I mean, there's a lot of other explanations to what may have happened there. But let's talk a little about this.

Now, we talked – I told you in the very beginning this was going to be like a jigsaw puzzle, [p. 198] and that you were going to get a lot of pieces. And now, you are going to have to put those pieces together.

Now, what was said here? What went on here? Well, I never said that Officer Baldwin got up there and lied on the stand. I said that Officer Baldwin – you know, Officer Baldwin got up there and told us a story about how he pulled over a car on July 23rd.

He told us how he walked up to the driver of the car, and the driver had the syringe. This is David Young. This is the brother of the person's house she was cleaning, Johnny Young's house. She's helping him move out and helping David Young get all his stuff packed up.

Now, he's giving her a ride home, and he has a syringe. And he sees that syringe – Officer Baldwin sees David Young's syringe. And he goes in there and he says, "Well, you know, I am going to search the car." He searches the car, and he finds the purse.

My client doesn't deny that her purse was in the car. My client got up there and said, "My purse was in the car." She admits to that. She admits to things that would hurt her on the stand. She admits [p. 199] that the purse is in the car.

And he goes through the purse, and he finds her identification. And he finds two other containers, a brown bag and a black bag. And he walks up to my client and she goes, "Yeah, that's my ID."

Now, Officer Baldwin has testified that she said, "in case things got bad." But actually, she tells him that because she was worried her daughter would hear on the scanner.

Now, he pulls out two other containers, and she admits, "That one is mine." She admits to it. She doesn't know whether or not that's going to contain – what kind of a crime by admitting to that it's going to cause her to have. You know, whether or not – what charge would be laid based on what she was admitting to. She admits, "This is mine; this one isn't mine."

Now, the district attorney thinks that he doesn't have to prove she possessed it. Yes, he does. He has to prove that she unlawfully, intentionally or knowingly possessed it.

She didn't knowingly possess it. She didn't intentionally possess this. She doesn't know how it got there. She says she admits to the black bag.

[p. 200] Now, Mr. Blonigen talked about her taking the stand, and she's had prior felonies. So she got up there and she admitted, she's not a saint. She has had her problems. But that's not the issue, whether or not she's been tried, or she's been convicted of those other crimes. She has already paid the price for those.

We are talking about this evening. This one evening, July 23rd. That's what we're talking about. We're not talking about what happened five years ago. We are talking on July 23rd. And she got up on the stand, and she admitted that she had done something wrong. She didn't lie and say, "I didn't do anything wrong that night." She got up there and admitted to doing something wrong. And that's important for you to keep in mind.

I mean, it's not like she got up there and lied about her past record. And it's not like she got up there and lied and said, "I didn't do anything wrong that night." She admits that she did something wrong that night.

Now, this is a serious situation here, and you have got to keep that in mind. I don't envy your job. I wouldn't want your job. I mean, this is a tough job to have. Anytime you're dealing with [p. 201] a criminal matter, it's a tough job. It's very serious. I don't envy that. People's lives could be affected by these decisions. And this is very serious.

Now, what has been proven here today? Well, I think it's pretty safe to say that they have proven here – and

remember, the State must prove this case, not us. I don't have to get up and cross-examine a witness, because everything rests on the State. That's *their* burden.

What have they shown? Well, July 23rd, there was an a traffic stop in Natrona County, Wyoming. Sandra Houghton was in the car. I think that it's safe to say that those elements have been proven.

Knowingly, intentionally, unlawfully possessed a controlled substance in liquid form, methamphetamine, over three-tenths, or .3 grams, same thing. I think in fractions. I don't know, if that's bad, but I think in fractions, but it's three-tenths of a gram.

Now, who did they bring up here to testify about what was in these substances, and what were they? They brought up the state crime lab guy. And what did he do? He told you about his [p. 202] expertise, and he told you about his degrees in chemistry, organic chemistry. He told you that he testified at 30 or 40 trials. And he told you he's done a thousand drug cases. And he told you that he's been certified as an expert in this court. This is who they bring to testify.

And why do these kinds of people need to be brought up? Well, one, they are scientists, and they know what they are doing. They know how to work the lab equipment, how to do this kind of stuff.

And another reason is, you know, the state crime lab man who testified said, "I don't have any personal knowledge of where this came from. I am just telling you what it is, what it weighs. That's all I'm telling you. I'm just telling you what they sent me and what it was."

That's what Officer Baldwin was up here for, to tell you where he got it.

Now, what did he tell you? He told you, "I sent two syringes, and I sent a vial." Okay. First, syringe is the big syringe. He tells you that this syringe weighs .51, and it's methamphetamine. That is what he tested. He weighed it and tested it. That's what he does. He [p. 203] tests the vial. Methamphetamine. Weighs and tests it, .27.

Third syringe – or second syringe, the second thing on the side of the little syringe. Tests it, methamphetamine. And says, "it's residue." That's what's left, residue.

Did they prove through their – that – that there's three-tenths? No, they prove that there's residue, and that's .27. That's what they've proven.

And they talk about – well, you know, they have the DCI agent who weighed the syringes. Well, he's not a scientist. He's not an expert. The man from the state crime lab, he's an expert. It's what he does for a living. He's the expert in this situation. He's the one who testified to what it was and that it weighed .27, residue. That's what these two things weighed. And that's what my client admitted to.

Now, I am not asking you to ignore the law. I am asking you to pay very close attention to the law. Three-tenths, that's it, .3 of a gram, .3. Did they prove .3? Well, what they've proven is .27, and residue. And that's mainly because my client got up on the stand and told you, "This is [p. 204] what I had on me." And that's because my client got up there and admitted to you.

Did they prove the other syringe? No, who's in that car? David Young is in that car. Who else is in that car? Vanessa McQueery. Could they have had access to that purse? Yes. Could they have put something in that purse? Yes. Could somebody else put something in that purse while she was cleaning the house? Yes. Somebody else could have had access to that purse.

Now, they talk a lot about the DCI officer Officer Peters, who testified here today. And even Officer Peters admitted this was a brief conversation. Ten minutes, probably. That's all the conversation took.

Now, my client told you, "I remember this conversation, you know, and I remember what I said." And she admitted to what she said. She said, "I admit that I owned a syringe." And she's getting up here and she's admitting that this is what I did.

Does it meet the statutory requirements of the law? No, it doesn't. And like I said, I don't envy your job. This is serious. This is a serious situation. Anytime you're in court it's serious and [p. 205] it doesn't matter what you're in here for. But let me tell you that with a criminal matter, it's even more serious.

I am asking you to return a verdict of not guilty, because they have not met the statutory requirement. They have not met the .3. That's not what they've proven beyond a reasonable doubt. And I am asking you to return that verdict of not guilty.

REBUTTAL

BY MR. BLONIGEN:

That's an awful narrow perch isn't it? Why do you have to be scientist to run a scale? Do you have to be scientist to run a scale? No. You or I, many of us – I used to work in a grocery store, and we would put the meat on the scale, and it would spit out a result for us, you know, the weight and price. And we'd put it on it and sell it. I was a high school kid. I wrapped the meat and put it on the scale, got the result and sold it.

The officer told you they maintained the scale for one purpose and one purpose only, the weighing of controlled substances.

Now, the defense would have you argue that somehow it's inaccurate, but did you hear one [p. 206] question in the cross-examination of the officer about the scale? Did you hear one question about whether the scale was accurate? No. That was all conceded here during the trial.

Now, that they figure out there is a problem with that, they want to disavow that. But there were no problems with it, ladies and gentlemen. And you can tell by – they say there's no problem with the state crime lab, yet their weighing method produced the same results as the state crime lab did. So now that they've figured out that this story isn't good enough, they want a second story.

The judge told you not to engage in speculation. To think that – that those drugs got in her purse without her knowledge, you might as well say, "Well, it could have

happened three weeks before." She didn't pick up her purse for three weeks.

All these things could be speculated on, but they were not proven by the evidence. And ladies and gentlemen, think about one other point. Obviously, it's been inferred that David Young somehow put these drugs in this purse.

But why would he put the drugs, all the syringes, the packaging material and the syringes [p. 207] that match in her purse that's in the back seat, and then leave one in his front pocket so the officer could see it when he walked up to the car? Of all the fundamental absurdities in this story, certainly that is one.

She says, it doesn't matter about her record. Well, it does matter. It affects her credibility. It affects it substantially. Obviously, as the law has recognized, those that do not take the law seriously might not well take that oath seriously.

She says, "Ignore Officer Peters." Well, ladies and gentlemen, you observed Officer Peters testify. Counsel, wants to say he was confused or somehow didn't understand. You heard what he said on that witness stand, and you observed his demeanor, and how he said it. Was he confused? Did he misunderstand? You make that decision.

Ladies and gentlemen, the point is that counsel offered all these fine theories, but the facts don't support them. The evidence and the facts show that she possessed this requisite amount, and, in fact, that she possessed all of it.

How else – what other logical, reasonable inference, as opposed to speculation, would the [p. 208] evidence show you in this case? You cannot avoid responsibility simply because you regret your decisions later. And you cannot avoid responsibility by constantly coming up with every new story that seems to contradict the evidence before you.

The evidence is clear. It was clear when the officer arrested her. It was clear when they wrote their reports, and it was clear in this courtroom. And only at that point, after hearing all that evidence and finding out she could not make the facts fit, did we hear this defendant's version, as opposed to the two earlier versions.

Only on closing argument do we hear about a problem with the scale, even though there was not one question.

Argument is not reasonable doubt, ladies and gentlemen. The evidence in this case is clear. And we would ask you to return a verdict of guilty.

THE COURT: Ms. Davis, would please you come forward and be sworn to take charge of the jury during its deliberations.

(The bailiff is sworn by the clerk.)

THE COURT: Members of the jury, this case is now submitted to you to agree upon a verdict. [p. 209] You are to stay together under the guard of the bailiff. You must confine your deliberations to the jury room and will communicate with no one, except yourselves and to the bailiff to announce that you have reached a verdict.

You will take with you, to assist you in your deliberations, the instructions given to you by the Court and the exhibits introduced during the trial.

You are not to be given any other material such as newspapers, books, dictionaries or anything else without the Court's permission.

The bailiff will prevent any persons from overhearing your deliberations.

The Court will be in recess until the jury has reached a verdict.

(The court was in recess at 9:41 a.m.)

(Back in the courtroom, with the jury present, at 10:53 a.m.)

THE COURT: Has the jury elected a foreperson and reached a verdict?

MS. TAYLOR: Yes, we have, Your Honor.

THE COURT: Would you please hand your verdict form to the bailiff.

Would you please read the verdict, [p. 210] Ms. Volin.

THE CLERK: Yes, Your Honor. "In the District Court, Seventh Judicial District, Criminal Action No. 12880, State of Wyoming versus Sandra Houghton."

"Verdict: The jury, duly empaneled to try this case finds the defendant guilty of Possession of a Controlled Substance, namely; methamphetamine, in a liquid amount in excess of three-tenths of a gram."

THE COURT: Ladies and gentlemen, is this your verdict?

(The jurors nod their heads.)

THE COURT: The verdict is complete. I want to thank the members of the jury for your services in this case. We all appreciate very much your time and attention. You can discuss your verdict with anyone you wish, but you do not need to do so.

The Court will be adjourned.

MR. BLONIGEN: Your Honor, may the State be heard on another matter after the jury is excused?

THE COURT: Yes. Go ahead, ladies and gentlemen, you can be excused.

(The jury leaves the courtroom at 10:54 a.m.)

[p. 211] MR. BLONIGEN: Your Honor, we would like to be heard on the subject of bond in this matter. In reviewing the file, this was not my file originally, it was Mr. Masterson's. And he was not apparently as familiar with the defendant as I was. I was involved in her prosecutions previously. The bond has been set, I believe, at $1500; is that correct?

MS. SHARUM: Yes.

MR. BLONIGEN: Cash or surety. Your Honor, in obtaining that bond, the defendant failed to disclose to the Court two material facts: One, that she had been convicted of two prior felonies, not one. But more importantly, Your Honor, that she jumped bond on the earlier case. That was never told to the Court.

She jumped bond in her earlier case that I was involved in Case No. 10834. And she was supposed to

appear for District Court Arraignment on August 15, 1989 and failed to appear. We did not recontact her again, until we arrested her for this second drug felony in early 1990.

Given that, Your Honor, the fact that the defendant now knows that the State will be requesting a penitentiary sentence. In addition, Your Honor, she has indicated a – what I would [p. 212] characterize as a desperation to avoid such a sentence.

And certainly her contacts with the police prior to and after the interview by DCI would indicate that. And we believe she is a substantial risk for flight. We would ask that the bond be increased to $5,000 cash or surety.

MS. SHARUM: Your Honor, this is a case in which there's been several court appearances that Ms. Houghton has had to make. We have had two separate Motions to Suppress. She has had to make the DCA as well as the trial. She's shown up for all of these court appearances.

The only court appearance she didn't show up to was a Motion to Continue, and that's because I was unable to contact her. Because it was set within a day of when I requested the setting.

She has had a furlough in this case. She was originally held in jail for a period of time. She had a furlough. She turned herself back in to the jail. I am unaware of her ever jumping bond prior to this situation.

You know, I am not aware she did that. Her sister has put up her property, and she is staying with one of her sisters. Her other sister has put [p. 213] up some property.

This is her family. She does not want to hurt them. I do not think she is a flight risk.

As I mentioned, she's shown up for both Motions to Suppress, her DCA, her trial, and she turned herself back in when she had a furlough. I think bond should continue until sentencing, Your Honor, and we request that.

MR. BLONIGEN: Excuse me. A few facts I will add. You were not present at the hearing she did not appear at, Your Honor. And I would note at that time Ms. Sharum indicated she was having difficulty contacting her.

There is no question, Your Honor, you signed that warrant in 1989, a bench warrant, Failure to Appear.

MS. SHARUM: Your Honor, at the time I was having difficulty contacting her, I only had one of her sisters' phone numbers. And now that I have both of them, I have had a much easier time contacting her, now that I have both phone numbers.

THE COURT: Is your client on probation now?

MS. SHARUM: No, she's not on probation right now.

[p. 214] THE COURT: Considering that she has made her other appearances in this case, I'll continue the same bond that was set earlier.

MR. BLONIGEN: Your Honor, we will request a Presentence Investigation.

MS. SHARUM: Thank you, Your Honor.

THE DEFENDANT: Thank you.

THE COURT: If there is nothing else for now we'll be adjourned.

(Proceedings concluded at 10:59 a.m.)

[p. 215] STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

CERTIFICATE

I, Sara C. McDowell an Official Court Reporter of the Seventh Judicial District of Wyoming, do hereby certify that the foregoing constitutes a full, true, complete, and correct transcript of the trial in the above-numbered and entitled cause, wherein the defendant was found guilty.

Dated this 20TH day of MAY, 1996.

/s/ Sara C. McDowell
Sara C. McDowell,
Official Court Reporter

JURY INSTRUCTIONS

INSTRUCTION NO. 1

(Filed Nov. 07, 1995)

LADIES AND GENTLEMEN OF THE JURY: I would like to read to you a general instruction before the commencement of this trial.

The functions of the Court and jury are distinct, and each is supreme in its own domain.

It is the exclusive province of the Court to determine the admissibility of all evidence, permitting proper evidence to go to the jury and excluding from the jury improper evidence, to define the issues and to instruct you as to the law applicable to the issues.

On the other hand, it is the exclusive province of the jury to weigh and consider all evidence which is presented to it; to determine the credibility of all witnesses who testify before you, and from such evidence and testimony, to determine the issues of fact in this case.

This duty you shall perform with sincere judgment and sound discretion, uninfluenced by sentiment, conjecture, or by passion or prejudice against any of the litigants in this case, or by public opinion or public feeling. The litigants have the right to demand and expect that you will conscientiously and dispassionately consider and weigh the evidence and apply the law of the case, and that you will reach a just verdict, regardless of the consequences. That verdict must express the individual opinion of each juror.

You are the exclusive judges of the facts and of the effect and value of the evidence, but you must determine

the facts from the evidence produced here in Court. If any evidence is admitted and afterwards is ordered by me to be stricken out, you must disregard entirely the matter thus stricken, and if any counsel intimates by any of his questions that certain hinted facts are, or are not, true, you must disregard any such intimation and must not draw any inference from it. As to any statement made by counsel in your presence concerning the facts of the case, you must not regard such a statement as evidence; provided, however, that if counsel for all parties stipulate to any fact, you are to regard that fact as being conclusively proved; and if in the trial any party admits a fact to be true, such admission may be considered by you as evidence in the case.

At times throughout the trial the Court may be called upon to pass on the question whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings and you are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence; nor does it pass on the credibility of the witness. As to any offer of evidence that may be rejected by the Court, you, of course, must not consider the same; as to any question to which an objection is sustained, you must not conjecture as to what the answer might be or as to the reason for the objection.

The jury is the sole judge of the credibility of the witnesses, and of the weight to be given their testimony. You should take into consideration their demeanor upon the witness stand, their apparent intelligence or lack of

intelligence, their means of knowledge of the facts testified to, the interest, if any, which any witness may have in the outcome of this trial, the prejudice or motives, or feelings of revenge, if any, which have been shown by the evidence. In so doing, you may take into consideration all of the facts and circumstances in the case and give such weight as you think the same are entitled to, in the light of your experience and knowledge of human affairs.

Given:
/s/ Dan Spangler

INSTRUCTION NO. 2

LADIES AND GENTLEMEN OF THE JURY: It becomes the duty of the Court to instruct you concerning the law applicable to this case. It is your duty as jurors to follow the law as stated to you in these instructions.

The attitude and conduct of jurors at the outset of their deliberations are a matter of considerable importance. It is rarely productive or good for a juror, upon entering the jury room to make an emphatic expression of his or her opinion on the case or to announce a determination to stand for a certain verdict. Your verdict should only be arrived at after careful and thoughtful deliberation and it may be helpful to you to listen to and consult with each other and to discuss the evidence freely and fairly and the deductions to be drawn therefrom in a sincere effort to arrive at a just verdict. The final test of the quality of your service will lie in the verdict which

you return to the Court, not in the opinions any of you may hold as you retire. Have in mind that you will make a definite contribution to efficient judicial administration if you arrive at a just and proper verdict in this case. To that end, the Court reminds you that in your deliberations in the jury room there can be no triumph excepting the ascertainment and declaration of the truth.

If you believe from the evidence in this case that any witness willfully and corruptly swore falsely to any material fact in this case, then you are at liberty to disregard all or any part of that testimony, except insofar as the same has been corroborated by other and credible evidence, and the facts and circumstances proved during the trial.

In determining any of the questions before you in this case, you should be governed solely by the evidence. You should not indulge in conjecture or speculation unsupported by the evidence. However, you may consider the evidence presented to you and the reasonable inferences and conclusions which may be drawn therefrom in the light of your knowledge, observation and experience in the affairs of life.

If in these instructions any rule, direction or idea be stated in varying ways, no emphasis thereon is intended, and none must be inferred by you. For that reason, you are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions as a whole, and are to regard each in the light of all the others. The order in

which the instructions are given has no significance as to their relative importance.

Given:
/s/ Dan Spangler

INSTRUCTION NO. 3

YOU ARE INSTRUCTED that the law places the burden upon the State to prove the defendant is guilty. The law does not require the defendant to prove ~~his~~ [her] innocence. Accordingly, you must assume that the defendant is innocent unless you are convinced beyond a reasonable doubt and from all of the evidence in the case that [s]he is guilty.

You should evaluate the evidence admitted in this case and determine the innocence or guilt of the defendant entirely in accordance with these instructions. The test you must us is this: if you have a reasonable doubt as to the truth of any of the claims made by the State, you should find the defendant not guilty. If you have no reasonable doubt as to the truth of any of them you should find the defendant guilty.

GIVEN:

/s/ Dan Spangler
JUDGE

INSTRUCTION NO. 4

YOU ARE INSTRUCTED that the Information in this case provides as follows:

"Comes Now the State of Wyoming, and informs the Court and gives the Court to understand that SANDRA HOUGHTON, late of the County aforesaid, on or about the 23rd day of July, 1995, in the County of Natrona, in the State of Wyoming, did unlawfully, knowingly or intentionally possess a controlled substance, namely: Methamphetamine, Schedule II, W.S. 1977, as revised, § 35-7-1016(d), and in a liquid amount greater than three-tenths (0.3) of a gram, in violation of W.S. 1977, as amended, § 35-7-1031(c)(iii). Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Wyoming."

GIVEN:

/s/ Dan Spangler
JUDGE

INSTRUCTION NO. 5

The necessary elements of the crime of Possession of a Controlled Substance, namely: Methamphetamine, are:

1. That on or about July 23, 1995, in the County of Natrona, State of Wyoming;

2. The Defendant, SANDRA HOUGHTON;

3. Did unlawfully, knowingly or intentionally possess a controlled substance, namely: Methamphetamine;

4. In a liquid form;

5. The weight of the controlled substance in a liquid form exceeding three-tenths (0.3) of a gram.

If you find from your consideration of all of the evidence that any of these elements has not been proved beyond a reasonable doubt, then you should find the Defendant not guilty.

If, on the other hand, you find from your consideration of all of the evidence, that each of these elements has been proved beyond a reasonable doubt, then you should find the Defendant guilty.

GIVEN:

/s/ Dan Spangler
JUDGE

INSTRUCTION NO. 6

YOU ARE INSTRUCTED that methamphetamine is a controlled substance under the laws of the State of Wyoming.

GIVEN:

/s/ Dan Spangler
JUDGE

INSTRUCTION NO. 7

For the purpose of determining the weight of the controlled substance described in Instruction 6, there shall be included the weight of the controlled substance and the weight of any carrier element, cutting agent, diluting agent or any other substance excluding packaging material.

GIVEN:

/s/ Dan Spangler
JUDGE

INSTRUCTION NO. 8

YOU ARE INSTRUCTED that possession, as the term is used in these instructions, means that a person either individually or jointly with another, exercised dominion and control over the substance. This may be proven by direct or circumstantial evidence and does not require proof of ownership of the substance.

GIVEN:

/s/ Dan Spangler
JUDGE

INSTRUCTION NO. 9

YOU ARE INSTRUCTED a person is qualified to testify as an expert if he has special knowledge, skill, experience, training or education sufficient to qualify him as an expert on the subject to which his testimony relates.

Duly qualified experts may give their opinions on questions in controversy at a trial. To assist you in deciding such questions, you may consider the opinion with the reasons given for it, if any, by the expert who gives the opinion. You may also consider the qualifications and credibility of the expert.

You are not bound to accept an expert opinion as conclusive, but should give to it the weight to which you find it to be entitled. You may disregard any such opinion if you find it to be unreasonable.

GIVEN:

/s/ Dan Spangler
DISTRICT COURT JUDGE

INSTRUCTION NO. 10

YOU ARE INSTRUCTED that in arriving at a verdict in this case, the subject of penalty or punishment is not to be discussed or considered by you, as that matter is one that lies solely with the Court, and must not in any way

affect your decision as to the innocence or guilt of the Defendant.

GIVEN:

/s/ Dan Spangler
JUDGE

INSTRUCTION NO. 11

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the sole purpose of returning a verdict.

You are not partisans. You are judges – judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

GIVEN:

/s/ Dan Spangler

STATE OF WYOMING)
) SS.
COUNTY OF NATRONA)

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
Criminal No. 12880/MB-v

STATE OF WYOMING,)
Plaintiff,)
vs.)
SANDRA HOUGHTON,)
Defendant.)

MOTION FOR DISMISSAL

(Filed Nov. 7, 1995)

COMES NOW Michael A. Blonigen, Assistant District Attorney, and respectfully moves the Court for an order dismissing Count I of the Information filed herein on the above-entitled matter. As grounds for this Motion, your movant informs the Court that it would be in the best interest of the State of Wyoming to do so.

DATED this 6th day of November, 1995.

/s/ Michael A. Blonigen
Michael A. Blonigen,
Assistant District Attorney

ORDER FOR DISMISSAL

THIS MATTER having come before the Court upon the above Motion, and the Court finding that good cause exists for the granting of the same;

NOW, THEREFORE, IT IS HEREBY ORDERED that the above-entitled matter be, and the same hereby is, dismissed.

DONE IN OPEN COURT this 6th day of November, 1995.

BY THE COURT:

/s/ Dan Spangler
DISTRICT COURT JUDGE

STATE OF WYOMING)
) SS.
COUNTY OF NATRONA)

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
Criminal No. 12880/MB-v

STATE OF WYOMING,)
Plaintiff,)
vs.)
SANDRA HOUGHTON,)
Defendant.)

VERDICT

(Filed Nov. 7, 1995)

THE JURY, duly empaneled to try this case, finds the Defendant:

(✓) GUILTY of Possession of a Controlled Substance, namely: Methamphetamine, and in a liquid amount in excess of three-tenths (0.3) of a gram.

( ) NOT GUILTY of Possession of a Controlled Substance, namely: Methamphetamine, in a liquid amount in excess of three-tenths (0.3) of a gram.

/s/ Heather D. Taylor
FOREPERSON

IN THE DISTRICT COURT FOR
NATRONA COUNTY, WYOMING
SEVENTH JUDICIAL DISTRICT
DOCKET NO. 12880

THE STATE OF WYOMING,)
PLAINTIFF,)
)
VS.)
SANDRA HOUGHTON,)
)
DEFENDANT.)

MOTION FOR JUDGMENT OF ACQUITTAL

(Filed Nov. 13, 1995)

COMES NOW, the Monica A. Sharum, attorney for the Defense, respectfully moves this Court for an Order of Judgment of Acquittal in the above-captioned matter in accordance with Rule 29(c) or the Wyoming Rules of Criminal Procedure by and for the reasons that the jury verdict was based on speculation and on conjecture and does not show that the Defendant was guilty of the offense charged.

THEREFORE, the Defendant prays for the Judgment of Acquittal to the charge herein.

DATED this 13 day of November, 1995.

/s/ Monica A. Sharum
MONICA A. SHARUM
Assistant Public Defender

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the foregoing MOTION TO JUDGEMENT OF ACQUITTAL AFTER JURY VERDICT on the attorney for the State of Wyoming by delivering the same to the Office of the District Attorney this 13 day of September, 1995.

/s/ Monica A. Sharum
Monica A. Sharum

IN THE DISTRICT COURT FOR
NATRONA COUNTY, WYOMING
SEVENTH JUDICIAL DISTRICT
DOCKET NO. 12880

THE STATE OF WYOMING,)
PLAINTIFF,)
VS.)
SANDRA HOUGHTON,)
DEFENDANT.)

MOTION FOR A NEW TRIAL

(Filed Nov. 13, 1995)

COMES NOW, the Monica A. Sharum, attorney for the Defense, respectfully moves this Court for an Order for a new trial in the above-captioned matter, for the following reasons:

1. The court erred in denying defendants motion for acquittal.

2. The verdict is contrary to the weight of the evidence.

3. The court erred in not granting defense request for the jury instructions on lesser included offenses.

THEREFORE, the Defenadant prays for a New Trial.

DATED this 13 day of November, 1995.

/s/ Monica A. Sharum
MONICA A. SHARUM
Assistant Public Defender

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the foregoing MOTION FOR NEW TRIAL on the attorney for the State of Wyoming by delivering the same to the Office of the District Attorney this 13 day of September, 1995.

/s/ Monica A. Sharum
Monica A. Sharum

[p. 1] STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
Criminal Action No. 12880

THE STATE OF WYOMING,)
Plaintiff,)
v.)
SANDRA HOUGHTON,)
Defendant.)

MOTION HEARING

(Filed Dec. 01, 1995)

The above-entitled matter came on for hearing on MOTION HEARING before the HONORABLE DAN SPANGLER, a Judge of the Seventh Judicial District of Wyoming, in the District Courtroom, Natrona County Courthouse, Casper, Natrona County, Wyoming, at the hour of 8:36 a.m., on the 30TH of NOVEMBER, 1995.

APPEARANCES:

For the State: MICHAEL A. BLONIGEN, Casper, Wyoming, Assistant District Attorney.

For the Defendant: MONICA A. SHARUM, Casper, Wyoming, Assistant Public Defender.

The defendant also appeared in person.

[p. 2] THURSDAY, NOVEMBER 30, 1995, MORNING SESSION, 8:36 a.m. PROCEEDINGS

THE COURT: The Court will come to order in the case of the State of Wyoming versus Sandra Hougton, Criminal Action No. 12880. Ms. Sharum.

MS. SHARUM: Your Honor, we're here on two motions today, a Motion for Judgment of Acquittal and a Motion for a New Trial.

The first motion, the Motion for Judgment of Acquittal, is based on the defense's assertion that the jury could not have found this – found the – my client guilty beyond a reasonable doubt, without speculation and conjecture, and did not, in fact – did, in fact, speculate on this particular case. And the verdict of jury should be set aside.

The other motion, the Motion for New Trial, is based on those same facts, that the jury could not have found my client guilty beyond a reasonable doubt, without speculation or conjecture; that the verdict was contrary to the weight of evidence, and also it was based upon the facts that the jury instruction for lesser included offense was not given.

THE COURT: It appears to me that there was substantial evidence to support the verdict of the [p. 3] jury, and that there was not evidence which would have supported the giving of the requested jury instruction on lesser included offenses. Therefore, I'll deny the motions.

MS. SHARUM: Thank you, Your Honor.

THE DEFENDANT: Thank you.

(Proceedings concluded at 8:38 a.m.)

[p. 4] STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

CERTIFICATE

I, Sara C. McDowell, an Official Court Reporter of the Seventh Judicial District of Wyoming, do hereby certify that the foregoing constitutes a full, true, complete, and correct transcript of the proceedings in the above-numbered and entitled cause, wherein the defendant was heard on two motions.

Dated this 1ST day of DECEMBER, 1995.

/s/ Sara C. McDowell
Sara C. McDowell,
Official Court Reporter

STATE OF WYOMING,)
) SS.
COUNTY OF NATRONA)

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
Criminal No. 12880/MB-v

STATE OF WYOMING,)
Plaintiff,)
vs.)
SANDRA HOUGHTON,)
Defendant.)

ORDER

(Filed Dec. 12, 1995)

THIS MATTER having come before the Court upon the Defendant's Motion for New Trial and Acquittal, and the Defendant appearing in person and with her attorney, Monica Sharum, and the State being represented by Michael A. Blonigen, Assistant District Attorney, and the Court having reviewed the matter finds that said Motion should be denied;

NOW, THEREFORE, IT IS ORDERED that the above-stated Motion be, and the same hereby is, denied.

DONE IN OPEN COURT this 12th day of December, 1995.

BY THE COURT:

/s/ Dan Spangler
DISTRICT COURT JUDGE

APPROVED AS TO FORM:

/s/ Monica A. Sharum
Monica Sharum,
Attorney for Defendant

/s/ Michael A. Blonigen
Michael A. Blonigen,
Assistant
District Attorney

STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
Criminal Action No. 12880

THE STATE OF WYOMING,)
Plaintiff,)
v.)
SANDRA HOUGHTON,)
Defendant.)

SENTENCING

(Filed Mar. 13, 1996)

The above-entitled matter came on for hearing on SENTENCING before the HONORABLE DAN SPANGLER, a Judge of the Seventh Judicial District of Wyoming, in the District Courtroom, Natrona County Courthouse, Casper, Natrona County, Wyoming, at the hour of 8:28 a.m., on the 12TH of MARCH, 1996.

APPEARANCES

For the State: MICHAEL A. BLONIGEN, Casper, Wyoming, Assistant District Attorney.

For the Defendant: MONICA A. SHARUM, Casper, Wyoming, Assistant Public Defender.

The defendant also appeared in person.

[p. 2] TUESDAY, MARCH 12, 1996, MORNING SESSION, 8:28 a.m. PROCEEDINGS

THE COURT: The Court will come to order in the case of the State of Wyoming versus Sandra Houghton, Criminal Action No. 12880. I've received a Presentence Report in this case. Have you received a copy of that, Ms. Sharum?

MS. SHARUM: Yes, I have.

THE COURT: Do you have anything further that you would like to present?

MS. SHARUM: Yes, sir. As a – as a matter prior to any sentencing, we would like to ask for a continuance. Ms. Houghton has informed me that her daughter will be in later this week, and she would like to see her. Also, that she still needs to do packing and storing of some of her personal property.

And she also informs me that today is her daughter's birthday as well, Your Honor.

MR. BLONIGEN: Your Honor, I think we should proceed with sentencing at this time. I will note – and I don't know if this has been provided to the Court. It was delivered to our office yesterday. But I would note, in any event, Your Honor, her bond has been pulled.

[p. 3] Has the Court been provided one of these?

(Mr. Blonigen gives a document to the Court.)

Ms. Vitamvas informed me yesterday, and provided the document I've given to the Court, revoking the defendant's bond. She is no longer on that bond. And, of course, pending what happens here today, Your Honor,

would not be eligible for release at this time, absent the posting of a new $1500 bond, in any event. So I don't think that a continuance is warranted in any event, Your Honor.

THE COURT: Well, I think it would be best to proceed at this time. And I'll deny the Motion for Continuance.

MS. SHARUM: Yes, sir. Your Honor, as you may recall this was a case that went to trial in November of last year. I would like to – what I believe would be an appropriate sentence in this case would be to suspend a penitentiary sentence, that was a two- to three-year penitentiary sentence on Ms. Houghton, and then require her to complete the Community Alternatives program.

And perhaps, if necessary under the supervision – and we'll let the probation officer decide this – any appropriate counseling that would [p. 4] be required, including inpatient treatment, if that is what is appropriate.

Your Honor, when you look through this record, I would note that most of the offenses here, other than the two – the two offenses that occurred in June of 1989, and January of 1990 – were, for the most part, traffic-type offenses.

These two offenses, the Conspiracy to Deliver or an attempt or conspiracy, in violation of the Controlled Substance Act, ran concurrent. She received two years of probation, six months of jail, suspended, and she completed five months at CAC. I believe that perhaps a longer term at CAC might be helpful to her. I think that at

CAC she can get the counseling, that she could need. And it could be very useful for her.

When you look through here, I think that she, perhaps, is coming to the realization that counseling is something that she needs. When – under the Health section, under Substance Abuse, when the defendant was asked about whether or not she is an alcoholic, she said, "I believe I am."

I think that this shows an indication that she's beginning to realize that she is having a problem with this, and these are things that she [p. 5] needs help with.

When you look through the Presentence Investigation, the probation officer talks about the fact that at one time she had a steady job. She had steady employment. Perhaps CAC can help her get back into that type of situation, where she could have a steady-type employment. The suspended sentence would be something to hold over her head, that she has to complete; that she has to do a good job.

I believe that she should also be sentenced to, at least, two years – maybe even three years – of supervised probation, under the usual terms and conditions, that she lead a worthy and law-abiding life, violate no federal, state, or local laws; that she consume no alcohol, no controlled substances; that she take counseling as ordered by probation, whether that be in or outpatient treatment – and that is what I think the probation officer should decide; that she do any community service that the probation department deems appropriate or necessary, and that she pay any restitution as the probation officer sets it up and deems it to be necessary.

Your Honor, I think this would be more appropriate in this case. When you look back at [p. 6] this case, taking the evidence, I guess, in the best light of the State, there were two syringes involved in this. I think this is an indication of somebody who has a drug problem and somebody who needs our help.

I think a suspended sentence, so that she has something held over her head; that if she doesn't do this right, she's going to the penitentiary. And then make her go to Community Alternatives; make her take the treatment, whether it be in or outpatient treatment, as the probation officer deems appropriate, would be the most appropriate sentence in this case, Your Honor. And that is what we would ask for today.

MR. BLONIGEN: Your Honor, she's known a penitentiary sentence has been hanging over her head since 1989, yet she never stopped dealing in drugs. She never stopped using. She never stopped associating with those people, and she chronically broke the law virtually every day, every week, for six years.

The indications were approximately 100cc's of liquid of methamphetamine, much more than a single, individual dose, multiple items of paraphernalia, including many used and unused [p. 7] syringes. Unlike Ms. Sharum, to me it clearly – the evidence clearly indicated that they were probably selling units of methamphetamine for personal use.

This is her third methamphetamine related felony, Your Honor. After those felonies, she had a string of three theft convictions. She is 50 years old. She has been

involved in the illegal drug I.V. use, in particular, since 1989.

She states that she stopped using I.V. in June, Your Honor. However, Your Honor, this offense took place July 23, 1995. She states that she never sold drugs, yet she's convicted of two felonies connected with the delivery of drugs.

Your Honor, there is not much in her Presentence Investigation that you can really take to heart. She, in her confessions, admitted all the drugs were hers. Later, in the trial, she admitted at least part of them were hers. Now, in the Presentence Investigation, none of them were hers.

This defendant has had four months to take care of what she says is just a drug problem, or what counsel says is a drug problem. We have not had one meaningful step towards any sort of treatment or anything else undertaken. Not only is [p. 8] it inappropriate to give probation on a third methamphetamine related offense, Your Honor, we believe it is particularly inappropriate when probation is not likely to succeed.

This is not a young person who has made a mistake in life. This is a person who has become deeply ingrained in the drug culture and in the criminal justice system.

We would recommend the Court sentence her to 30 to 36 months in the Wyoming State Penitentiary.

THE COURT: Ms. Houghton, you have the right to address the Court or present any further matters in the extenuation or mitigation. Do you wish to make any statement?

THE DEFENDANT: Yes. I did never sell drugs, for sure. I have been going to NA recently, but I wasn't aware I should inform anybody about it. And as far as my bond being pulled, I haven't heard anything about it. And everybody knows where I am at, and my family does, and the probation department has my address.

Also, one more thing, I just have a few things left that I have to get put away in storage. I didn't have a truck to use yesterday. I packed, and everything like that. I just need to have a few [p. 9] hours to get them put away, so that I have them when I get out of wherever I am going. And I'd like to call my daughter. She's in North Dakota.

THE COURT: Ms. Houghton, it's my duty to advise you that you have the right to appeal, and that you must file your Notice of Appeal within 30 days after the filing of the Judgment and Sentence in this case. And if you are unable to pay for the cost of appeal, you have the right to apply for leave to appeal informa pauperis, to have appointed counsel represent you on the appeal, and to have the Clerk of Court file the Notice of Appeal.

It's the order of this Court that you be sentenced to the Wyoming State Women's Center for a term of not less than two years and not more than three years, with credit for time previously served.

And I think it would be in the interest of justice, particularly concerning the bond situation, that Ms. Houghton be placed in the sheriff's custody at this time. If there's nothing else for now, we'll be adjourned.

(Proceedings concluded at 8:39 a.m.)

[p. 10] STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

CERTIFICATE

I, Sara C. McDowell, an official Court Reporter of the Seventh Judicial District of Wyoming, do hereby certify that the foregoing constitutes a full, true, complete, and correct transcript of the proceedings in the above-numbered and entitled cause, wherein the defendant was sentenced.

Dated this 13TH day of MARCH, 1996.

/s/ Sara C. McDowell
Sara C. McDowell,
Official Court Reporter

STATE OF WYOMING)
) SS
COUNTY OF NATRONA) IN THE DISTRICT COURT
SEVENTH JUDICIAL
DISTRICT

STATE OF WYOMING,) Criminal No. 12880/MB
Plaintiff,)
vs.)
SANDRA HOUGHTON,)
Defendant.)

JUDGMENT AND SENTENCE

(Filed Mar. 25, 1996)

THIS MATTER having come before the Court on the 12th day of March, 1996, and the Defendant having appeared in person and with her attorney, Monica Sharum, and the State of Wyoming being represented by Michael A. Blonigen, Assistant District Attorney, and the Defendant having previously been found guilty by a jury of the charge herein of Possession of a Controlled Substance, to-wit: Methamphetamine, in liquid form in an amount greater than three-tenths ($^{3}/_{10}$ths) of one (1) gram, a felony, in violation of W.S. 1977, as amended, §35-7-1031(c)(iii); the Court hereby makes the following findings:

1. That the Defendant was represented by competent counsel and was satisfied with the performance of counsel;

2. That the Defendant did testify on her own behalf;

3. That the Court did have before it for its consideration the Presentence Investigation Report prepared by the Department of Corrections, Probation and Parole; and

4. That restitution is not an issue in this matter.

AND THE COURT having heard the arguments of the parties regarding sentencing and having considered probation;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Defendant be remanded to the custody of the Sheriff of Natrona County, Wyoming, where she shall await transfer to the Wyoming Women's Center, located at or near Lusk, Wyoming, where she shall begin serving a term of not less than two (2) years nor more than three (3) years, with credit off the minimum and maximum sentence for fifty-nine (59) days previously served in the Natrona County Detention Center.

IT IS FURTHER ORDERED that if a surety bond has been posted herein, it shall be discharged and exonerated.

DONE IN OPEN COURT this 22nd day of March, 1996.

BY THE COURT:

/s/ Dan Spangler
JUDGE SPANGLER

APPROVED AS TO FORM:

/s/ Monica A. Sharum
Monica Sharum
Attorney for
Defendant

/s/ Michael A. Blonigen
Michael A. Blonigen,
Assistant District
Attorney

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
CRIMINAL ACTION NO 12880

THE STATE OF WYOMING,)
PLAINTIFF,)
VS.)
SANDRA HOUGHTON,)
DEFENDANT.)

NOTICE OF APPEAL
(Filed Mar. 26, 1996)

COMES NOW, the Appellant (Defendant), Sandra Houghton, by and through his counsel, and pursuant to Rule 2.01 of the Wyoming Rules of Appellate Procedure (1992 Rev.), hereby gives notice of his intention to appeal to the Wyoming Supreme Court the Judgment and Sentence of the Court, by the Honorable Judge Spangler, Seventh Judicial District.

DATED this 26 day of March, 1996.

/s/ Monica A. Sharum
MONICA SHARUM

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27 day of March, 1996 a true and correct copy of the foregoing to be served upon the following by depositing the same in the U.S. Mail, postage prepaid addressed as follows:

District Attorney's office
200 N. Center, Suite 300
Casper, WY 82601

Attorney General
State of Wyoming
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Cheyenne, WY 82002

Judy Pacheco
Wyoming Supreme Court
Clerk
Wyoming Supreme Court
Bldg
Cheyenne, WY 82002

Debra Cornia
Appellate Counsel
Public Defender's Office
225 9th St.
Evanston, WY 82930

/s/ Monica A. Sharum
MONICA SHARUM

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
CRIMINAL ACTION NO. 12880

THE STATE OF WYOMING,)
PLAINTIFF,)
VS.)
SANDRA HOUGHTON,)
DEFENDANT.)

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS
(Filed Mar. 26, 1996)

COMES NOW, Sandra Houghton, the above-named Defendant, by and through, Monica Sharum, Assistant Public Defender, and respectfully moves this court for leave to proceed on appeal in forma pauperis, pursuant to Rule 10.6, of the W.R.A.P. The Defendant seeks leave to proceed in forma pauperis as to all costs and fees of the appeal, including attorney's fees, court costs, and the costs of the record and transcript on appeal.

DATED this 26 day of March, 1996.

/s/ Monica A. Sharum
MONICA SHARUM

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27 day of March, 1996 a true and correct copy of the foregoing to be served upon the following by depositing the same in the U.S. Mail, postage prepaid addressed as follows:

District Attorney's office
200 N. Center, Suite 300
Casper, WY 82601

State Public Defender
2020 Carey Ave, 3rd floor
Cheyenne, WY 82001

Joseph P. Meyer
Attorney General
123 Capitol Bldg
Cheyenne, WY 82002

/s/ Monica A. Sharum
MONICA SHARUM

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
CRIMINAL ACTION NO. 12880

THE STATE OF WYOMING,)
PLAINTIFF,)
VS.)
SANDRA HOUGHTON,)
DEFENDANT.)

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS
(Filed Mar. 26, 1996)

THIS MATTER having come before this Court on the Defendant's Motion to Proceed on Appeal in Forma Pauperis; the Court being duly apprised in the premises FINDS:

IT IS HEREBY ORDERED that the Defendant be allowed to proceed on appeal in forma pauperis, as to all costs and fees associated with the appeal, including attorney's fees, court costs of the record and transcript on appeal.

DATED this 26th day of March, 1996.

/s/ Dan Spangler
DISTRICT COURT JUDGE

(3)

FILED
NOV 10 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 98-184

In The

Supreme Court of the United States

October Term, 1998

THE STATE OF WYOMING,

Petitioner,

v.

SANDRA HOUGHTON,

Respondent.

On Writ Of Certiorari
To The Wyoming Supreme Court

BRIEF FOR THE PETITIONER

GAY WOODHOUSE
Acting Attorney General
State of Wyoming

PAUL S. REHUREK*
Deputy Attorney General

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Counsel for Petitioner

**Counsel of Record*

November 10, 1998

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QUESTION PRESENTED FOR REVIEW

Whether the "automobile exception" to the Fourth Amendment's warrant requirement allows police to search a passenger's personal belongings – in this case a purse – located inside the passenger compartment of a vehicle lawfully stopped for traffic violations, when police have developed probable cause to search the vehicle generally for controlled substances but have no probable cause specific to the purse or passenger.

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ARGUMENT II. 23

As a general principle, a warrant to search a container covers any smaller containers that may be found inside it, without the need for an additional warrant or probable cause specific to the smaller container.

ARGUMENT III. 26

If this search had been conducted incident to arrest, not requiring probable cause to search, it would have been lawful. It is peculiar to hold the search unlawful when, as here, it is based on probable cause.

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OPINION BELOW

The opinion of the Wyoming Supreme Court is reported at 956 P.2d 363 (Wyo. 1998) and is reproduced in the appendix to the petition for a writ of certiorari. (Pet. App. 1-25).

JURISDICTION

The judgment of the Wyoming Supreme Court was entered on April 3, 1998. (Pet. App. 1). Its order denying a petition for rehearing was entered April 28, 1998. (Pet. App. 26). The petition for a writ of certiorari was filed on July 27, 1998 and was granted on September 29, 1998. This Court's jurisdiction rests upon 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

In the early morning hours of July 23, 1995, Officer Delane Baldwin of the Wyoming Highway Patrol conducted a traffic stop on a vehicle traveling east on Interstate 25 in Natrona County. Officer Baldwin observed that the car was speeding and had a burned out brake light. After stopping the car, a 1977 Cadillac, Officer Baldwin contacted the driver, David Young. There were two female passengers in the car, one of whom was the respondent. All the occupants were on the front seat, with respondent located at the end next to the passenger door. (Jt. App. 134-37, 139-40, 162).

Officer Baldwin, now joined by other officers, asked Mr. Young for his driver's license, registration and insurance certificate. At this point, the officer noticed a hypodermic syringe plainly visible in Mr. Young's left front shirt pocket. Officer Baldwin informed Mr. Young that he had seen the syringe and was going to retrieve his gloves from the patrol car. Upon his return, he instructed Mr. Young to get out and place the syringe on the hood of the car, which he did. In response to a question, Mr. Young stated that he used the syringe to take drugs. (Jt. App. 137-40).

Two fellow officers then removed the passengers from the vehicle and patted them down for weapons. Respondent left her purse on the back seat of the car when she exited from the front seat; she was not told to leave it there. She verbally identified herself as "Sandra James" and claimed she had no identification. (Jt. App. 140-43).

Officer Baldwin then began a search of the passenger compartment for drugs, based on the syringe and Mr. Young's statement that he used the syringe to take drugs. The officer found a closed lady's cloth purse on the middle of the back seat and removed a wallet from it. The wallet contained respondent's photo driver's license, identifying her as Sandra K. Houghton. When Officer Baldwin asked her why she gave a false name, Ms. Houghton replied it was "in case things went bad." (Jt. App. 141-45).

Officer Baldwin then removed a brown bag from the cloth purse. Opening the bag, the officer found a syringe containing approximately 60 cc's of liquid that proved to be methamphetamine. Looking further, Officer Baldwin found more syringes, razor blades and other drug paraphernalia inside the brown bag. The officer then looked at respondent's arms, finding fresh needle track marks. At that point, Officer Baldwin arrested respondent. (Jt. App. 147-50, 158-59, 180-83).

Searching further in the purse, the officer found a smaller black bag containing numerous drug-related items, including syringes, spoons and razor blades. (Jt. App. 150-51). In all, three items inside the purse (two syringes and a vial) were found to contain methamphetamine or methamphetamine residue. (Jt. App. 181-83). During the search, respondent admitted the purse was hers but selectively denied ownership of some of the items pulled from the purse. (Jt. App. 19, 166-69). The only person arrested or charged in this incident was the respondent. (Jt. App. 169). The driver was not arrested because the syringe in his pocket contained "little or very little substance" and the officer believed the

state crime lab would prefer not to test it under these circumstances. (Jt. App. 173-74).

Ms. Houghton was charged in state district court with possession of methamphetamine in a liquid amount greater than three-tenths of a gram, a felony. Wyo. Stat. § 35-7-1031(c)(iii). Prior to trial, she filed a motion to suppress all evidence seized in the search of the car, claiming, *inter alia*, that the search violated the Fourth and Fourteenth Amendments. A hearing was held on the motion. Subsequently, a decision letter and order were issued denying the motion. The district judge ruled that when an officer has generalized probable cause to believe contraband is somewhere in a car, he may search the car and containers within the car, including a passenger's purse. (Jt. App. 3-4, 12-13, 14-26, 27-28, 79-80). Evidence of Ms. Houghton's drug possession was duly admitted at trial over the objection of defense counsel. (Jt. App. 145-46). Respondent was convicted by the jury as charged. (Jt. App. 269-70, 286).

Respondent appealed her conviction to the Wyoming Supreme Court,[1] claiming error in the denial of her motion to suppress evidence seized in the search of the car.[2] Three other issues were raised on appeal but not

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[1] There is no intermediate court of appeals in Wyoming for review of cases originating in the state district courts.

[2] Although respondent's claim of error in the trial court and Wyoming Supreme Court relied on both the Fourth Amendment and its state constitutional counterpart, Wyo. Const. art. 1, § 4, she failed to adequately develop her state constitutional argument on appeal as required by *Gronski v. State*, 910 P.2d 561, 565-66 (Wyo. 1996). Thus, the Wyoming

considered, the court deeming the search and seizure issue to be dispositive. (Pet. App. 2). Respondent conceded on appeal there was probable cause to search the car for drugs but maintained that in the absence of probable cause specific to her or her purse, the search violated her reasonable expectation of privacy in her personal belongings. (Pet. App. 6). The Wyoming Supreme Court framed the issue to be "whether the personal belongings of a passenger may be searched under the 'automobile exception' when probable cause exists to search the automobile, but there is no probable cause to believe the passenger is involved in criminal activity." (Pet. App. 5-6).

The court's analysis began with this Court's pronouncements on the scope of a warrantless search based on probable cause, recognizing that " '[t]he scope of a warrantless search based on probable cause is no narrower – and no broader – than the scope of a search authorized by a warrant supported by probable cause.' " *United States v. Ross*, 456 U.S. 798, 823 (1982). The court further acknowledged that, according to *Ross*, 456 U.S. at 821, " '[a] warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search.' " (Pet. App. 7).

While seeming to accept the proposition that the scope of a warrantless search based on probable cause is the same as the scope of a search pursuant to a warrant, and that the officer here had probable cause to search the

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Supreme Court considered the issue solely under Fourth Amendment standards. (Pet. App. 6, n. 2).

car generally for contraband that was capable of being concealed in Ms. Houghton's purse, the court identified the "problem" to be that there was no specific probable cause to believe the purse contained contraband. At this point, the court declared:

> Therefore, the question is, if a warrant had issued on the basis that *Young* [the driver] held drugs in his car, whether the search of the personal effects of a *passenger or guest* would be within the scope of the warrant. (emphasis in original.)

(Pet. App. 8).

The court's use of the word "guest" in the passage above to describe Ms. Houghton's status was not accidental, for on this single word the court's analysis shifted from car searches to searches of the person and personal effects of *guests on fixed premises*. After noting the holding in *Ybarra v. Illinois*, 444 U.S. 85 (1979) (warrant to search premises of a tavern and the person of the bartender does not permit pat down search of a patron), the court discussed the three tests courts have employed for determining when a premises search warrant authorizes a search of a visitor's personal items. Weighing the relative merits of the three tests,[3] the court adopted the "notice" test for *both* searches of a visitor's personal effects under a premises search warrant,[4] and for the search of a motor vehicle

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[3] The three tests are the physical proximity test, the relationship test and the notice test. *See, generally*, 2 Wayne R. LaFave, *Search and Seizure*, § 4.10(b) (3rd ed. 1996).

[4] Petitioner is not challenging herein that part of the Wyoming Supreme Court's holding that applies to the search of a visitor's personal effects under a premises search warrant.

passenger's personal effects under the Fourth Amendment's automobile exception. (Pet. App. 15, 17).

Under the notice test, an officer may assume that all containers on the premises may be searched unless he knows or should know that a container belongs to someone not covered in the warrant. If he knows or should know the container belongs to a visitor, he may search it only if there is independent probable cause to do so, or if someone on the premises had an opportunity to conceal contraband in the container immediately prior to execution of the search warrant. *See State v. Thomas*, 818 S.W.2d 350, 359 (Tenn.Crim.App. 1991).

Applying the notice test to the facts of this case, the court concluded the search violated the Fourth Amendment:

> Generally, once probable cause is established to search a vehicle, an officer is entitled to search all containers therein which may contain the object of the search. However, if the officer knows or should know that a container is the personal effect of a passenger who is not suspected of criminal activity, then the container is outside the scope of the search unless someone had the opportunity to conceal the contraband within the personal effect to avoid detection. Here, the officers knew or should have known that the purse did not belong to the driver, but to one of the passengers. Since there was no probable cause to search the passengers' personal effects and no reason to believe that contraband had been placed within the purse, the search was unreasonable and in violation of the Fourth Amendment right to be free from such governmental intrusion.

(Pet. App. 21-22).

Two of the five Justices of the Wyoming Supreme Court dissented from this ruling. The State of Wyoming filed a timely petition for rehearing which was denied by the court on April 28, 1998, with the same two Justices dissenting from the denial of rehearing. (Pet. App. 22, 26).

SUMMARY OF THE ARGUMENT

The question presented in this case is whether police may search a passenger's personal belongings located inside a vehicle stopped for traffic violations when police have probable cause to search the vehicle generally for controlled substances but have no probable cause specific to the passenger. The Wyoming Supreme Court held that in the absence of specific probable cause to believe the passenger is engaged in criminal activity, the passenger's personal belongings may not be searched. While this Court has not previously ruled on the precise question involved, the Court's pronouncements over the years concerning the automobile exception to the Fourth Amendment's warrant requirement have effectively answered the question in the affirmative.

I. Beginning with *Carroll v. United States*, 267 U.S. 132 (1925), and continuing through *United States v. Ross*, 456 U.S. 798 (1982), and *California v. Acevedo*, 500 U.S. 565 (1991), the Court has arrived at the "true rule" and the "one rule" for warrantless searches of vehicles based on probable cause: when officers have developed probable cause to conduct a general search of a lawfully stopped vehicle for contraband or evidence of a crime, they may

search every part of the vehicle and every container within it that may conceal the object of the search.

This rule is comprehensive and unequivocal. It applies equally to all containers. In terms of privacy, there is no distinction in this context between the vehicle and its contents. All the privacy interests involved yield to the authority of a search based on probable cause, to the same extent they would yield under a warrant's command. It follows ineluctably that probable cause to conduct a general search of a vehicle permits the opening of every container that could hold the object of the search, including a container belonging to a passenger for whom there is no individualized suspicion of criminal activity.

II. The rule announced by the Wyoming Supreme Court violates a basic precept of search and seizure doctrine. A warrant authorizing the search of a container, whether that container is a vehicle, a building or some other object, also authorizes the search of any smaller containers found inside it, without the need for a second warrant or additional probable cause specific to the smaller container. Because a warrant permits the search of the smaller containers found inside the larger one named in the warrant, and because this Court has declared the scope of a warrantless car search based on probable cause to be as broad as one authorized by a warrant, the officer's probable cause in this case to conduct a general search of the car authorized the search of the smaller container (the purse) found inside the car.

III. If the Wyoming Supreme Court's rule is left to stand, the personal belongings of "nonsuspect"

passengers will be outside the lawful scope of a search under the automobile exception. This will produce an unjustified disparity between the lawful scope of an automobile search and the scope of a search incident to the arrest of a vehicle occupant under *New York v. Belton*, 453 U.S. 454 (1981). When a vehicle occupant is subjected to a lawful custodial arrest, the passenger compartment of the vehicle may be searched as a contemporaneous incident of that arrest and any containers found therein may be opened and examined. Such a search is justified as being incident to the arrest of the occupant and is not based on probable cause. When the scope of a *Belton* search is considered in relation to the Wyoming Supreme Court's rule, a constitutional anomaly appears. A *Belton* search of a car interior, although not based on probable cause, may reach containers that are beyond the scope of a search based on probable cause. It is similarly incongruous to declare that *two* measures of probable cause are needed to search certain containers in an automobile – probable cause to search the car generally and probable cause to search the containers specifically.

IV. The decisions of this Court in the area of automobile searches have attempted to conserve the public's interest in effective law enforcement as well as the interests and rights of individual citizens. The ruling below substantially and unreasonably impedes law enforcement by requiring the officer in the field to make difficult and subtle judgments regarding the extent of his authority to search containers inside a vehicle. Even when the officer has established probable cause to search a car and its contents, he must nevertheless decide who among the occupants are criminal suspects in order to determine

which containers may be searched. He then must attempt to allocate containers between suspects and nonsuspects so that he does not search containers belonging to nonsuspects. Only then may he proceed with a search.

Requiring such complex and time consuming evaluations concerning the extent of an officer's authority to search will cause needless confusion and uncertainty in law enforcement and the lower courts. Such a system not only violates established Fourth Amendment jurisprudence, it ignores the proven need for a single, familiar standard, readily applicable by police in the field.

This Court should reverse the judgment of the Wyoming Supreme Court and hold that probable cause to search a vehicle under the automobile exception permits the search of all containers inside the vehicle that could hold the object of the search, including containers belonging to occupants who are not individually suspected of criminal activity.

ARGUMENT I

The Wyoming Supreme Court's decision is plainly contrary to this Court's "automobile exception" doctrine as developed in *Carroll, Ross* and *Acevedo*.

In holding that probable cause to search a car generally for contraband is insufficient to support a search of the personal belongings of a passenger for whom there is no individualized probable cause, the Wyoming Supreme Court has effectively repudiated this Court's "automobile

exception" to the Fourth Amendment's warrant requirement. In Wyoming, automobile searches in cases involving one or more passengers (an obviously common situation) will now be governed by rules heretofore applicable only to a constitutionally distinct situation – the search of personal belongings of visitors to fixed premises. The court erred by not recognizing the proper scope a warrantless search of an automobile after probable cause has been established to search the car generally for contraband.

In *Carroll v. United States*, 267 U.S. 132 (1925), this Court established the automobile exception to the general requirement that a warrant be obtained to conduct a search. *Carroll* involved the stop of an automobile by federal prohibition agents who had probable cause to believe the car was transporting liquor. After stopping the car the agents performed a warrantless search, finding liquor concealed inside the upholstery. The defendants contended that the search and seizure violated the Fourth Amendment.

Noting that the Fourth Amendment denounces only "unreasonable" searches and seizures, 267 U.S. at 147, the Court endeavored to determine the meaning of the phrase by reference to how it was understood at the time of adoption:

> The 4th Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens.

Carroll, 267 U.S. at 149.

After reviewing various acts of Congress dealing with the collection of duties, enacted from the time of the first Congress onward, the Court determined that a clear distinction had always been made between the search of a dwelling house or other building and the search of a movable vessel. The search of a fixed structure required a warrant but the search of a movable vessel was in a different category:

> [T]he guaranty of freedom from unreasonable searches and seizures by the 4th Amendment has been construed, practically since the beginning of the government, as recognizing a necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon, or automobile for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

Carroll, 267 U.S. at 153.

Having determined that a warrant was not invariably required to search an automobile, the Court concluded that a warrantless search of a vehicle is lawful if based upon probable cause:

> On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is

> subject to seizure and destruction, the search and seizure are valid.

Carroll, 267 U.S. at 149.

Carroll established the constitutional standard for warrantless automobile searches based on probable cause to believe contraband is located somewhere inside a lawfully stopped vehicle. In later cases, however, distinctions were made between circumstances in which officers had probable cause to search a vehicle generally and those in which officers had probable cause to search only a particular container seized from a vehicle. In the latter instance, where the probable cause extends only to the container and not the entire vehicle, it was held that the *Carroll* doctrine did not apply and a warrant must be obtained to search the container.

In *United States v. Chadwick*, 433 U.S. 1 (1977), officers had probable cause to believe a footlocker being shipped by train contained marijuana. When the defendants received the footlocker in Boston, they loaded it into Chadwick's car. Officers arrested Chadwick and his companions before they could leave and performed a warrantless search of the footlocker at a secure location. The government contended that the search of movable luggage was analogous to the search of a car under *Carroll*, making a warrant unnecessary. This Court rejected the argument, ruling that a person's expectation of privacy in personal luggage is greater than in an automobile. 433 U.S. at 13.

Shortly afterward, in *Arkansas v. Sanders*, 442 U.S. 753 (1979), the Court had a situation similar to *Chadwick*. Police had probable cause to believe a suitcase contained

marijuana. They observed Sanders arrive at an airport with the suitcase and place it in the trunk of a taxi. The taxi departed but was stopped after several blocks, and the officers searched the suitcase at the scene without a warrant. The Court rejected the State's argument that the search was controlled by *Carroll*, noting that police had probable cause to seize the suitcase before it was placed in the taxi and did not have probable cause to search the vehicle itself. As in *Chadwick*, the Court affirmed a person's expectation of privacy in personal luggage, a privacy interest not diminished by its presence in an automobile. 442 U.S. at 764-65.

Currently, the lawful scope of searches under the automobile exception is primarily the product of two cases, *United States v. Ross*, 456 U.S. 798 (1982), and *California v. Acevedo*, 500 U.S. 565 (1991). In *Ross*, police developed probable cause to believe Ross' car contained narcotics which Ross was selling out of the trunk. After locating Ross driving his car on a city street, police performed a stop and searched the car without a warrant. Inside the trunk, they found heroin and a leather pouch containing cash. The question presented was the scope of a warrantless auto search authorized by *Carroll*:

> In this case, we consider the extent to which police officers – who have legitimately stopped an automobile and have probable cause to believe contraband is concealed somewhere within it – may conduct a probing search of compartments and containers within the vehicle whose contents are not in plain view.

Ross, 456 U.S. at 800.

The Court reasoned that the answer must be consistent with *Carroll*, emphasizing that the *Carroll* decision "was based on the Court's appraisal of practical considerations viewed in the perspective of history." 456 U.S. at 820. In considering the lawful scope of a search under the automobile exception, the Court acknowledged the argument that perhaps the vehicle itself could be thoroughly searched, with all packages and containers found inside submitted later to a magistrate for a warrant. This approach was rejected, however, because practical considerations in locating the contraband demand that both the car and its contents be held until the entire search is completed, and because a delayed search of the containers "would actually exacerbate the intrusion on privacy interests." 456 U.S. at 822, n. 28. Furthermore, the Court had already upheld warrantless searches of containers found during lawful searches of automobiles in *Husty v. United States*, 282 U.S. 694 (1931) (search of "whiskey bags" that could have contained other goods), and *Scher v. United States*, 305 U.S. 251 (1938) (packages of unstamped liquor wrapped in brown paper and tied with twine). The fact that no argument was even made in those cases that a warrant was needed to open the containers indicated to the Court that the bench and bar understood *Carroll* to permit such a search.

Reasoning that the practical consequences and historical perspective of *Carroll* would be nullified by a contrary rule, the Court concluded that the permissible scope of a warrantless search of an automobile includes the containers and packages found inside the vehicle:

> We hold that the scope of the warrantless search authorized by that [automobile] exception is no

> broader and no narrower than a magistrate could legitimately authorize by warrant. *If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.* (emphasis added.)

Ross, 456 U.S. at 825.

The Court also held that "[t]his rule applies equally to all containers," 456 U.S. at 822, affirming what had been stated earlier in *Robbins v. California*, 453 U.S. 420 (1981) (plurality opinion), that there was no proper constitutional distinction between "worthy" containers requiring a warrant to search, and "unworthy" containers that could be searched without a warrant. Likewise, there is no distinction in this context between privacy interests in the car itself and privacy interests in the contents of the car. All the privacy interests involved must yield to the authority of a search based on probable cause, the same as if a warrant had issued. 456 U.S. at 823.

Having defined the scope of a warrantless search under the automobile exception, the Court revisited the holdings of *Chadwick* and *Sanders* in *California v. Acevedo*, 500 U.S. 565 (1991). In *Acevedo*, police were keeping a certain apartment under surveillance because they knew a Federal Express package containing marijuana had just arrived there. A short time later, Acevedo came to the apartment, stayed a few minutes and then left with a brown paper sack which officers had probable cause to believe contained a portion of the marijuana shipped in the Federal Express package. Police stopped Acevedo as he drove away, opened the trunk and then opened the paper sack which contained marijuana. Since police only

had probable cause to search the paper bag and not the car, the case seemed to be controlled by *Chadwick*, not *Ross*, making the warrantless search of the bag unlawful. The precise question before the Court was "whether the Fourth Amendment requires the police to obtain a warrant to open the sack in a movable vehicle simply because they lack probable cause to search the entire car." 500 U.S. at 573.

The Court considered the confusion created by the dual regimes governing automobile searches that uncover containers; one rule allowing the container to be opened without a warrant, the other rule requiring a warrant. After noting that *Ross* eliminated privacy distinctions between cars and the containers they hold, and that containers found after either a general search of the car or a limited search for the container are equally easy for the police to store and the suspect to hide, the Court concluded that there is

> no principled distinction in terms of either the privacy expectation or the exigent circumstances between the paper bag found by the police in Ross and the paper bag found by the police here. Furthermore, by attempting to distinguish between a container for which the police are specifically searching and a container which they come across in a car, we have provided only minimal protection for privacy and have impeded effective law enforcement.

Acevedo, 500 U.S. at 574.

Deciding that "it is better to adopt one clear-cut rule to govern automobile searches and eliminate the warrant

requirement for closed containers set forth in Sanders", 500 U.S. at 579, the Court held:

> We therefore interpret Carroll as providing one rule to govern all automobile searches. The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained.

Acevedo, 500 U.S. at 580. In so holding, the Court maintained the narrow principle that probable cause limited to a particular container in a car does not justify a search of the entire vehicle. *Id.*

The Wyoming Supreme Court gave only cursory attention to the fact that this case involves an automobile search. It failed to recognize that an automobile passenger has a lesser expectation of privacy than a visitor to fixed premises, and likewise, the passenger's personal effects enjoy a reduced measure of freedom from governmental intrusion. Under the automobile exception, as long as the personal effects are found within the car and may hold the object of the search, *Ross* allows them to be searched by virtue of their presence in the car. *Ross* made no suggestion that once probable cause to search a vehicle is established, only portions of the vehicle or some of the containers therein may be searched. Quite to the contrary, *Ross* established a comprehensive rule to govern all situations. Furthermore, the fact that Ms. Houghton was not personally suspected of criminal activity when the search began does not place her property beyond the limits of an otherwise lawful search. *Zurcher v. Stanford Daily*, 436 U.S. 547, 559-60 (1978).

The Wyoming court's adoption of a single rule to govern certain aspects of both premises and automobile searches appears unprecedented. As this Court has made clear, the search of an automobile moving down a highway is constitutionally distinguishable from the search of fixed premises. The inherent mobility of automobiles creates exigent circumstances, *Chambers v. Maroney*, 399 U.S. 42, 50-51 (1970), and the pervasive governmental regulation of vehicles traveling on the highways creates a lesser expectation of privacy in the vehicle's contents. *California v. Carney*, 471 U.S. 386, 392 (1985).

Other courts that have considered this issue have not resorted to legal principles governing fixed premises, but have correctly recognized that *Ross* controls. In *People v. McMillon*, 892 P.2d 879 (Colo. 1995), a case remarkably similar to this one, a police officer lawfully stopped a vehicle for a traffic offense. After determining the driver's identity, the officer arrested him on an outstanding warrant related to drugs. He then directed the passenger, McMillon, to step out of the vehicle. She did so, leaving her closed purse behind on the seat. The officer then observed a syringe in plain view inside the car. This observation, together with the driver's drug history and denial that anyone was diabetic, prompted a search of the car's interior. The officer searched McMillon's purse and found cocaine.

The Colorado Supreme Court ruled that the officer had probable cause to perform a general search of the car for contraband, and that neither *Ross* nor *Acevedo* required a separate probable cause determination for the passenger's purse. The search of the purse was proper irrespective of whether the officer knew or should have

known that it belonged to McMillon. As an alternative ground for sustaining the search, the court held that it was a proper search incident to arrest under *New York v. Belton*, 453 U.S. 454 (1981), even though the purse belonged to a passenger who was not the subject of the arrest. The same result was reached by the court in *People v. Moore*, 900 P.2d 66 (Colo. 1995), where, after a traffic stop during which the officer developed probable cause to search the car generally for drugs, it was held that the officer could properly search a passenger's wallet found under a seat.

Similar applications of *Ross* to the search of a passenger's personal effects, after developing probable cause to search the vehicle generally, can readily be found. *See, e.g., State v. Fix*, 730 P.2d 601, 603-04 (Or.App. 1986) (search of passenger's purse upheld when there was probable cause to believe truck held evidence of an earlier crime, citing *State v. Brown*, 721 P.2d 1357 (Or. 1986), and *State v. Bennett*, 721 P.2d 1375 (Or. 1986)); *United States v. Crotinger*, 928 F.2d 203, 205-06 (6th Cir. 1991) (automobile exception permitted warrantless probable cause search of passenger's suitcases in trunk); *United States v. Critton*, 43 F.3d 1089, 1094-95 (6th Cir.), *cert. denied*, 514 U.S. 1121 (1995) (even if passenger had requisite expectation of privacy in blue bag, probable cause to search vehicle extended to the bag).

It does not require extended analysis to realize, as this Court said in *Ross*, 456 U.S. at 820, "the practical consequences of the Carroll decision would be largely nullified" if the permissible scope of a warrantless search of an automobile did not include all of the containers found inside, but only the ones belonging to occupants

for whom probable cause has specifically been developed. The Wyoming Supreme Court's rule amounts to a revival of *Chadwick*, *Sanders* and *Robbins*, in the sense that once again the car itself may be searched without a warrant on probable cause while some of its containers may be searched, if at all, only with a warrant.

The illogic in the court's rule becomes even more apparent when one compares the scope of a lawful search of residential premises to the scope of a lawful car search under the automobile exception. As the Court noted in *Ross*, 456 U.S. at 820-21, the search of the home extends to the entire area covered by the warrant. Executing the warrant allows separate acts of entry and the opening of rooms, closets, drawers and containers as long as the object of the search may be found in those locations. Some of these locations could easily be the rooms, closets and drawers of "nonsuspect" occupants of the home; i.e., occupants regarding whom the police have not derived the probable cause used to secure the warrant. Although nonsuspects, their privacy interests give way to the authority of the warrant and their personal belongings may be searched if capable of holding the object of the search. Under the Wyoming Supreme Court's rule, the scope of an automobile search will not reach the personal belongings of nonsuspect occupants of a car, thus bestowing a superior privacy interest on them compared to that enjoyed by nonsuspect occupants of a home. This not only runs contrary to the reduced expectation of privacy supposedly applicable to an automobile and its contents, it constricts the scope of a lawful car search more severely than that of a lawful premises search.

It is apparent that the Wyoming Supreme Court erred in its understanding of the Fourth Amendment's automobile exception. Given the existence of probable cause to search the vehicle generally, an *additional* measure of probable cause should not be required to search a particular container that could hold the object of the search. The Fourth Amendment does not require such calculations, and the rule of *Ross* and *Acevedo* contains no such qualifications. As this Court has made clear, probable cause to search a vehicle extends to "every part of the vehicle and its contents that may conceal the object of the search." *Ross*, 456 U.S. at 825.

ARGUMENT II

As a general principle, a warrant to search a container covers any smaller containers that may be found inside it, without the need for an additional warrant or probable cause specific to the smaller container.

On appeal to the Wyoming Supreme Court, both Ms. Houghton and the court acknowledged that there was probable cause to conduct a general search of the automobile for controlled substances. (Pet. App. 5-6). It was also apparent to the court that Ms. Houghton's purse was capable of concealing controlled substances. (*Id.* at 8). The court further acknowledged that the scope of a warrantless automobile search under *Ross* is identical to the scope of a search that would be authorized by a warrant. Nevertheless, the court concluded that this generalized probable cause did not encompass Ms. Houghton's purse on the back seat; the officer needed probable cause specific to the purse in order to search it. According to the court,

even if a warrant had issued to search the car, the purse would not have been within the scope of the warrant.

The Wyoming Supreme Court erred in concluding that a warrant to search the car for drugs would not have permitted the search of the purse. This conclusion was reached only by giving Ms. Houghton the status of a visitor to fixed premises. If a warrant had issued to search the car, it would have allowed a search of the purse and no additional probable cause specific to the purse would have been needed, nor would a second search warrant have been required. Because the purse was capable of concealing the object of the search (drugs), it could have been opened under the authority of a warrant.

As a general principle, the scope of a warrant authorizing the search of a container, whether it is a car or a building or some other object, authorizes the search of any smaller containers found inside it, as long as the smaller container is capable of holding the object of the search.[5] No additional warrant or extra measure of probable cause is needed to search the smaller container. This principle is consistent with the language of the Fourth Amendment, which only requires a description of the place to be searched, not the receptacles found therein.

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[5] In *Ross*, 456 U.S. at 820-21, the Court noted that a warrant will permit separate acts of opening at the place to be searched although such acts are not specifically authorized in the warrant: "A warrant to open a footlocker to search for marihuana would also authorize the opening of packages found inside."

In *United States v. Kralik*, 611 F.2d 343 (10th Cir. 1979), *cert. denied*, 445 U.S. 953 (1980), a warrant was obtained to search a vehicle for weapons, including a sawed off shotgun belonging to Kralik. At the time the car was stopped and seized, it was being operated by another person and Kralik was a passenger. A search of Kralik's suitcase in the trunk revealed the shotgun. Relying on *Ybarra v. Illinois*, 444 U.S. 85 (1979), Kralik contended that the search warrant did not extend to his suitcase and that a second warrant was needed to search it.

The court of appeals disagreed, reasoning that when a search warrant covers the primary container (the car), additional warrants are not required for the smaller containers inside. Considering the search warrant at issue in *Ybarra*, which did not extend to patrons on the tavern premises, the court said, "We do not equate the search of a person unnamed in a warrant with the search of a described automobile for a specified item." 611 F.2d at 345. *Accord, United States v. DeSimone*, 660 F.2d 532, 542 (5th Cir. 1981), *cert. denied*, 455 U.S. 1027 (1982) (valid warrant to search one person's car permitted search of another person's suitcase found therein without need for an additional warrant); *United States v. Grandstaff*, 813 F.2d 1353, 1358-59 (9th Cir.), *cert. denied*, 484 U.S. 837 (1987) (warrant to search vehicle authorizes search of any luggage therein that might contain contraband listed in warrant); *United States v. Calarco*, 668 F.2d 920, 921 (6th Cir. 1982) (warrant to search car authorized search of objects found within car); *United States v. Finch*, 679 F.2d 1083, 1085 (4th Cir. 1982) (warrant to search truck authorized opening of opaquely wrapped bales in truck without need for a second warrant); *United States v. Callison*,

577 F.2d 53, 55 (8th Cir.), *cert. denied*, 439 U.S. 873 (1978) (warrant to search car authorized search of suitcase found therein without need for a second warrant).

Application of this principle to premises searches produces the same result. *See, e.g., United States v. Morris*, 647 F.2d 568, 572-73 (5th Cir. 1981) (warrant to search residence allowed search of locked jewelry box found in residence without need for a second warrant); *People v. Press*, 633 P.2d 489, 492-93 (Colo.Ct.App. 1981) (warrant to search house permitted search of locked safe found in house without need for a second warrant).

Given the equivalence between the scope of a warrantless automobile search based on probable cause and the scope of a search authorized by warrant, these cases demonstrate that Ms. Houghton's purse fell within the scope of the search at issue here. No Fourth Amendment violation occurred.

ARGUMENT III

If this search had been conducted incident to arrest, not requiring probable cause to search, it would have been lawful. It is peculiar to hold the search unlawful when, as here, it is based on probable cause.

A curious anomaly arises in this case from the fact that the search was based on probable cause and was not performed incident to the arrest of the driver, David Young. If he had been lawfully arrested prior to initiation of the search involved here, the Wyoming Supreme Court would have been constrained to uphold the search of Ms.

Houghton's purse as incident to Young's arrest. No probable cause would have been required to search the passenger compartment or the purse. And yet, because this search was based on probable cause to search the car generally, it is struck down.

In *New York v. Belton*, 453 U.S. 454 (1981), a car containing four men was stopped for speeding by an officer. While checking the driver's license and car registration, the officer smelled burnt marijuana and observed an envelope on the floor he reasonably suspected of containing marijuana. All four men were arrested. After searching the men, the officer searched the passenger compartment of the car. On the back seat he found a jacket belonging to Belton and searched it, finding cocaine. The question presented to the Court was the proper scope of a car search incident to the arrest of the occupants. This involved application of the search incident to arrest doctrine of *Chimel v. California*, 395 U.S. 752 (1969), to automobiles. This Court held that when an officer makes a lawful custodial arrest of a motor vehicle occupant, he may, contemporaneously with the arrest, search the passenger compartment of the vehicle and open *any* containers found therein. Such a search is not justified by the existence of probable cause to search; rather, it is the custodial arrest based on probable cause that justifies the intrusion. 453 U.S. at 460-61.

This straightforward rule has been applied numerous times to allow the search of a nonarrested passenger's personal effects found inside a vehicle. *See, e.g., State v. Moore*, 619 So.2d 376, 377 (Fla.Dist.Ct.App. 1993) (arrest of driver permitted search incident to arrest of passenger's closed purse on floorboard); *State v. Loftis*, 568

So.2d 121, 122 (Fla.Dist.Ct.App. 1990) (arrest of driver permitted search incident to arrest of passenger's open purse on floorboard); *People v. Mitchell*, 42 Cal.Rptr.2d 537, 539-40 (Cal.Dist.Ct.App. 1995), *cert. denied*, 517 U.S. 1192 (1996) (driver's arrest permitted search incident to arrest of passenger's purse on floorboard, citing *People v. Prance*, 277 Cal.Rptr. 567 (Cal.Dist.Ct.App. 1991)); *State v. Parker*, 944 P.2d 1081, 1084-85 (Wash.Ct.App. 1997), *review granted*, 958 P.2d 315 (Wash. May 6, 1998) (No. 66147-2) (driver's arrest permitted search incident to arrest of passenger's purse voluntarily left on seat; *cf. State v. Seitz*, 941 P.2d 5 (Wash.Ct.App. 1997) (driver's arrest does not justify search of passenger's purse where purse is not in car at time of search but is on passenger's person outside of car)); *People v. Bullock*, 485 N.W.2d 866, 869-70 (Mich. 1992) (arrest of *passenger* permitted search incident to arrest of *driver's* purse left in car); *State v. Treutelaar*, No. 96-3249-CR, 1997 WL 213040, 211 Wis.2d 889 (Wis.Ct.App. May 1, 1997) (arrest of driver permitted search incident to arrest of passenger's manila envelope left on floorboard).

The Wyoming Supreme Court ruled that the personal belongings of nonsuspect occupants of an automobile may not be searched even where an officer has probable cause to search the vehicle generally. If left to stand, this ruling will produce an anomalous disparity between the scope of a *Carroll* search based on probable cause and the scope of a *Belton* search of a vehicle interior incident to the arrest of an occupant. In the first situation, where there is probable cause to search generally, a container in the car that could hold the object of the search is not within the search's scope, but in the second situation, the same container in the car may be opened although the

officer lacks probable cause to search at all. This is the kind of anomaly rightfully condemned in *Acevedo*, 500 U.S. at 568. To be consistent under the Fourth Amendment, both types of searches should allow the opening of the purse involved here.

ARGUMENT IV

The Wyoming Supreme Court's holding represents a departure from this Court's insistence on a single, familiar Fourth Amendment standard, readily applicable by police in their day-to-day law enforcement activities.

From the perspective of a police officer in the field, trying to determine the proper scope of a vehicle search under the rule announced by the Wyoming Supreme Court will present serious difficulties. Where an officer has probable cause to search a vehicle containing several occupants, he must first make a series of subtle Fourth Amendment calculations that will determine which containers he may search and which containers he may not search. Trial courts presented with a motion to suppress will fare no better.

At least since the days of *Carroll*, this Court has recognized the difference between searches of lawfully stopped vehicles and premises searches in terms of the constitutional protection afforded each. Premises have always enjoyed more Fourth Amendment protection from warrantless searches than moving vehicles. *See, e.g., Agnello v. United States*, 269 U.S. 20, 33 (1925) ("Belief, however well founded, that an article sought is concealed in a dwelling house, furnishes no justification for a search of that place without a warrant. And such searches are

held unlawful notwithstanding facts unquestionably showing probable cause.") It is not the case that a passenger lacks an expectation of privacy in his personal effects while traveling on a highway. Rather, it is the lawful stop of the vehicle followed by the development of probable cause to search it that justifies the infringement of the passenger's privacy interest. Just as passengers must tolerate the stop of an automobile and the attendant delay occasioned by the actions of the driver, their belongings are subject to search as a consequence of being in a vehicle for which there is probable cause to search. Once probable cause is established to search the car generally, it is difficult to understand how some containers can be "more private" than others, to the point of defeating the probable cause.

If the Wyoming Supreme Court had given closer consideration to the respective situations of automobile passengers and premises visitors, it might not have treated them alike under the Fourth Amendment. When an officer submits his case to a magistrate in order to obtain a premises search warrant, the State's proof and the magistrate's assessment of probable cause occur without any regard to the chance that a visitor may be on the premises when the warrant is eventually executed. Consequently, the probable cause to search never attaches to the visitor or his belongings. In an automobile search, however, the passenger and his belongings are present at the time and place that probable cause to search is established. The passenger is part of the factual setting giving rise to the probable cause.

Logically, treating the personal belongings of passengers in a car the same as those of visitors or guests to

fixed premises does not make sense and, as a practical matter, it is unworkable. One simply does not "visit" mobile vehicles traveling on the streets and highways. People inside a moving vehicle obviously have the common purpose of getting from one place to another together by using the public thoroughfares. Guests on premises, however, may have any of a myriad of reasons for being on the premises, and they may come and go, be there or not be there, as they choose.

As this case illustrates, Ms. Houghton was not "visiting" the car she jointly occupied with David Young. Whatever else their reasons may have been that night for being together, their joint presence in the car demonstrated a common purpose of using the car to get from one place to another over the public roads. If Ms. Houghton had fortuitously been driving the car at the moment it was stopped instead of Young, who would have been the "guest/passenger" and who would have been the "resident" of the premises? Is the driver always in possession of the car to the exclusion of the passengers? If the registered owner is always the "resident" of the vehicle, what if he is not present in the car when it is stopped? Is everyone in the car a mere visitor then? What if Young was alone in the car but Ms. Houghton's purse was there? Could police have searched it then? What if the syringe in this case had been seen in Ms. Houghton's shirt pocket and not Young's? Would that have created probable cause to search the car or only Ms. Houghton and her belongings? Can probable cause to search the car be developed only through the driver?

The rule announced by the court will require officers to make difficult judgments concerning which containers

may be searched. The occupants of a vehicle apparently must be divided into at least two groups – suspects and nonsuspects. Personal effects must then be allocated among the occupants to determine which ones may be searched. Police will have to develop facts through questioning the occupants, a process not likely to produce truthful information or, perhaps, any information at all. Police will have to proceed at their peril.[6]

Unfortunately, this rule will produce the very sort of mischief this Court has strenuously sought to prevent in the area of search and seizure. Quoting in part from LaFave, *"Case-By-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma*, 1974 S. Ct. Rev. 127, this Court warned in *Belton*, 453 U.S. at 458:

> "Fourth Amendment doctrine, given force and effect by the exclusionary rule, is primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged. A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of

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[6] It is not merely the rights of suspects that are involved. Police exposure to civil liability for guessing wrong about the extent of a person's constitutional rights is a matter worthy of this Court's consideration. This Court summarized it best in *Belton*, 453 U.S. at 459-60: "When a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of his constitutional protection, nor can a policeman know the scope of his authority."

> subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be 'literally impossible of application by the officer in the field.' " *Id.*, at 141.

> In short, "[a] single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." *Dunaway v. New York*, 442 U.S. 200, 213-214.

The holding of the Wyoming Supreme Court revives the confusion that marked the state of the automobile exception in years past. To eliminate the confusion, this Court should make it plain that there is indeed one rule, the true rule, for *all* searches under the automobile exception. That rule is the one defined by *Carroll*, *Ross*, and *Acevedo*.

CONCLUSION

The Wyoming Supreme Court has produced a rule that violates the plain language of this Court's pronouncements concerning the automobile exception. This rule represents a regression to the former disarray in the law that was so troublesome to courts and law enforcement. This Court should make clear that probable cause to search a vehicle under the automobile exception permits the search of all containers inside the vehicle that could

hold the object of the search, including containers belonging to occupants for whom police do not have individualized probable cause.

The judgment of the Wyoming Supreme Court should be reversed on the foregoing basis, and the case remanded for the court's consideration of the remaining issues.

Respectfully submitted,

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No. 98-184

In The

Supreme Court of the United States

October Term, 1998

THE STATE OF WYOMING,

Petitioner,

vs.

SANDRA HOUGHTON,

Respondent.

On Writ Of Certiorari
To The Wyoming Supreme Court

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QUESTION PRESENTED

Whether the "automobile exception" to the Fourth Amendment's warrant requirement allows police to search a passenger's personal belongings – in this case a purse – located inside the passenger compartment of a vehicle lawfully stopped for traffic violations, when police have developed probable cause to search the vehicle generally for controlled substances but have no probable cause specific to the purse or passenger.

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STATEMENT OF THE CASE

Respondent, Sandra Houghton, was a passenger in a car driven by David Young. The car was pulled over by a Wyoming Highway Patrol Officer because of faulty lights and the car appeared to be speeding. The officer was quickly joined by two other officers. (J.A. 16-17).

The officer approached the driver's side of the vehicle. While questioning Young, he noticed a syringe in Young's pocket. Young was ordered out of the car and searched. Ms. Houghton and another female passenger were also ordered out of the car and frisked. (J.A. 17-18).

Without consent, the officer searched the vehicle. He discovered a large purse in the rear seat of the car; Ms. Houghton claimed ownership. The officer then opened the purse, without permission, and found a wallet containing identification for Sandra Houghton. He further searched the purse and found three small wallet-type containers. In these containers, he found diluted methamphetamine. (J.A. 18).

Before trial, Ms. Houghton filed a motion to suppress all evidence found during the warrantless search. During this hearing, the officer admitted that he had no probable cause to search Ms. Houghton and that men do not usually carry purses. (J.A. 21). The district court denied the motion to suppress. (J.A. 27-28).

Ms. Houghton was found guilty of felony possession of a controlled substance and sentenced to the Wyoming Women's Center for two to three years. (J.A. 286, 304-305). Ms. Houghton appealed her conviction to the

Wyoming Supreme Court. The court reversed her conviction, holding that "the search of [Ms. Houghton's] purse exceeded the reasonable scope of the search of the car, violating her Fourth Amendment rights." (Pet. App. 2).

SUMMARY OF ARGUMENT

The Fourth Amendment prohibits police from searching the personal effects of persons they have no reason to believe have engaged in any kind of wrongdoing. The Wyoming Supreme Court preserved this principle when it held the search of Ms. Houghton's personal belongings unreasonable.

I. The Wyoming Supreme Court's holding continues this Court's prior rulings requiring probable cause before a warrantless search of a passenger's personal belongings can be conducted, even when the search is pursuant to the automobile exception. *See Carroll v. United States*, 267 U.S. 132, 149 (1925); *United States v. Ross*, 456 U.S. 798, 825 (1982); *California v. Acevedo*, 500 U.S. 565, 580 (1991).

The automobile exception does not broaden the scope of a warrantless search. The scope of a warrantless search is the same as one authorized by a warrant and is limited to places where there is probable cause to believe contraband will be found. If a passenger is not suspected of criminal activity, there is no probable cause to believe contraband will be found in the passenger's personal belongings; any search of those belongings would be unreasonable. In this case, the officer admitted he did not have probable cause to believe Ms. Houghton was

involved in any illegal activity. (J.A. 21). Therefore, the officer did not have probable cause to search Ms. Houghton's personal belongings. The search was outside the scope of the automobile exception's warrantless search.

Petitioner's argument that once there is authorization to search a large container, all smaller containers within the large container can be searched without probable cause specific to the smaller container directly contradicts the Court's holding on the scope of a warrantless search pursuant to the automobile exception. In *Ross*, the Court held that containers within the automobile which cannot conceal the contraband sought cannot be searched. "[P]robable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase." *United States v. Ross*, 456 U.S. at 824. This argument has already been answered by this Court and the answer is adverse to Petitioner's position.

II. Petitioner suggests that if this had been a search incident to arrest, the officers would have been able to search Ms. Houghton's personal belongings. This Court has not extended *New York v. Belton*, 453 U.S. 454 (1981), to searches of passengers who have not been arrested. This case does not present the facts for this Court to decide the issue. Ms. Houghton was not arrested or suspected of criminal activity prior to the search and the only basis for the arrest came subsequent to the search. Allowing use of the fruits of the search to justify the intrusion would nullify the probable cause and individualized suspicion requirements of the Fourth Amendment.

There is no anomaly created by the existence of more than one exception to the warrant requirement. There are several exceptions, including: stop and frisk, evanescent evidence, and plain view. Each of these exceptions has specific conditions precedent that must be met before a search or seizure is considered reasonable.

More disturbing is the proposition of the Petitioner which would allow the automobile exception to subsume the search incident to arrest exception. Absent an arrest, a search should be allowed only when there is probable cause to believe the passenger's personal belongings contain contraband.

III. The Wyoming Supreme Court's holding is a continuation of the fundamental principles of the Fourth Amendment that a warrantless search without probable cause or individualized suspicion is unreasonable. Before a search of a passenger can occur, there must be individualized suspicion and probable cause to believe that person is engaged in illegal activity. When there is general probable cause to search an automobile, a presumption exists that all containers within the automobile may also be searched. However, if the officer knows or has reason to know that the container belongs to a person the officer does not have probable cause to believe is involved in criminal activity, the container cannot be searched. Officers already apply the holding of the Wyoming Supreme Court. *See California v. Acevedo*, 500 U.S. at 579, 580.

This Court should affirm the judgment of the Wyoming Supreme Court and hold that probable cause is

required before a law enforcement officer may search a passenger's personal belongings.

ARGUMENT I

The Wyoming Supreme Court's holding that the search of Ms. Houghton's purse was unreasonable is the essence of this Court's automobile exception doctrine as developed in *Carroll*, *Ross* and *Acevedo*.

"[T]he Fourth Amendment protects people, not places." *Katz v. United States*, 389 U.S. 347, 351 (1967). The government is required to respect privacy rights afforded to its citizens under the Fourth Amendment. *Chandler v. Miller*, 520 U.S. 305, ___, 117 S.Ct. 1295, 1298 (1997) ("This restraint on government conduct generally bars officials from undertaking a search or seizure absent individualized suspicion.")

Individualized suspicion requires that the search or seizure of a person or his effects be supported by probable cause particularized to that person. Probable cause is not present where it is based on the mere association of the person with someone else suspected of criminal activity or the person's mere presence at the scene of a crime. *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979). Similarly, mere presence in a suspected car, without more, does not vitiate one's right to be free from unreasonable searches. *United States v. DiRe*, 332 U.S. 581, 587 (1948).

The Wyoming Supreme Court affirmed this basic principle of Fourth Amendment law when it held that the search of Ms. Houghton's purse was unreasonable. Ms. Houghton's mere presence in the automobile which the

officer had probable cause to search did not generate probable cause to search her personal belongings. The State attempted to justify the search of Ms. Houghton's personal belongings by relying on the automobile exception. However, the automobile exception to the Fourth Amendment's warrant requirement does not diminish, nor encroach upon, the right to be free from unreasonable searches, including the unreasonable search of automobile passengers.

The automobile exception has evolved from two particular circumstances. First, automobiles are mobile. *California v. Carney*, 471 U.S. 386, 390-391 (1985); *Carroll v. United States*, 267 U.S. 132, 151 (1925). Removal of the automobile and disposal of any contraband hidden in the vehicle is easily accomplished. Second, individuals have a "reduced expectation of privacy in an automobile, owing to its pervasive regulation." *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996), relying on *California v. Carney*, 471 U.S. 386, 393 (1985). This Court has held it reasonable to search a vehicle, "[i]f a car is readily mobile and probable cause exists to believe it contains contraband." *Pennsylvania v. Labron*, 518 U.S. at 940.

Three cases from this Court have delineated the scope of the search allowed by the automobile exception, which is the sole issue of this case. *See Carroll v. United States*, 267 U.S. 132, 153-154 (1925); *United States v. Ross*, 456 U.S. 798, 825 (1982); *California v. Acevedo*, 500 U.S. 565, 580 (1991).

In *Carroll*, the Court first established the automobile exception to the Fourth Amendment warrant requirement

when it held that an automobile could be searched only if there was probable cause for the search:

> But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official, authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise.

Id. 267 U.S. at 154.

Ross clarified that *Carroll* relaxed the warrant requirement but still required the scope of the search to be based on probable cause. In *Ross*, the Court held that containers within an automobile may be searched when there is probable cause to believe that the contraband sought will be found inside the container. However, the scope of the search is no broader or narrower than would be authorized by a warrant. *United States v. Ross*, 456 U.S. at 825.

The next case in the automobile search line of cases is *Acevedo* in which this Court held, "We therefore interpret *Carroll* as providing one rule to govern all automobile searches. The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained." *California v. Acevedo*, 500 U.S. at 580.

The Wyoming Supreme Court preserved the probable cause requirement of the automobile exception, the individual's right to privacy and the need for individualized suspicion under the Fourth Amendment when it

acknowledged the "notice test."[1] This test assists police officers in determining if probable cause exists which would allow a warrantless search of personal belongings found during an automobile search. The notice test is based on the presumption that the entire vehicle and all of its containers may be searched if the officer believes that contraband has been concealed in the vehicle. However, if during the search, the officer finds the personal belongings of the passenger, and he has no probable cause to believe the passenger is involved in illegal activity and does not believe that the passenger has concealed items for the driver, there is no probable cause for a warrantless search of the passenger or the passenger's belongings. The Wyoming Supreme Court's holding protects an innocent person, as the Fourth Amendment requires, from an unreasonable search even when there is probable cause to search the vehicle in which the individual is a passenger. In this case, after pulling over the driver for speeding and a faulty light, the officer noticed a syringe in Young's pocket. Upon inquiry, Young admitted using the syringe to take drugs. (J.A. 17). The officer had probable cause to believe Young might have illegal substances concealed in the automobile. (J.A. 20-21). However, the officer admitted there was no probable cause to believe Ms. Houghton was involved in any criminal activity. (J.A. 21). During his search, the officer found a large purse, which he searched even though, "[g]enerally speaking, men do not carry purses." The officer knew

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[1] The notice test is simply new terminology for the previously prescribed process an officer engages in to determine individualized probable cause in an automobile stop.

that the purse belonged to Ms. Houghton but he had probable cause to believe only Young was involved with criminal activity. (J.A. 18, 21).

The Wyoming Supreme Court concluded that the officer knew or should have known that the purse did not belong to Young and "that [the officer had] no reason to believe the object of the search was placed in the purse prior to the stop." (Pet. App. 18). The purse was outside of the scope of a lawful search because there was no indication that it might contain contraband. This conclusion is consistent with this Court's prior holding in *Acevedo* that only containers which the officer has probable cause to believe contain contraband may be searched. *California v. Acevedo*, 500 U.S. at 580.

In *Ross* and *Acevedo*, there were no passengers in the vehicle. The probable cause in each of those cases allowed the search of all containers within the automobile which could contain the contraband sought. In this case, the officer was searching for evidence of Young's controlled substance usage. The officer had no basis to conclude Ms. Houghton's personal belongings contained evidence of Young's drug usage.

In *Acevedo*, this Court referred to the concepts of the notice test without actually labeling it as such. The police only had probable cause to believe that contraband was in the paper bag which was in the trunk of the vehicle. There was no indication that contraband had been secreted in the vehicle itself; consequently the police were on notice that the probable cause was specific to the paper bag and only the paper bag could be searched. *California v. Acevedo*, 500 U.S. at 579, 580.

In this case, the probable cause was specific to Young. Since there was no indication that contraband had been hidden in Ms. Houghton's personal belongings, and the police knew the purse did not belong to Young, there was no probable cause to believe contraband would be found in her purse. Consequently, the search was unreasonable.

If this Court were to hold that passengers may be searched even though probable cause exists that only the driver is involved with illegal activities, it would result in grave abuses of the Fourth Amendment. For example, the teenager who is being taught to drive, or the professional driver in a private car for whom there is probable cause to search have exposed the teenager's parents or the driver's client to a warrantless search. A search of either passenger under these circumstances is clearly unreasonable, but allowable under the Petitioner's bright line rule.

The Petitioner also argues that the search of a large container allows the search of smaller containers.[2] (Brief for the Petitioner, p. 23). This Court has already determined the scope of an automobile exception and Petitioner's argument must fail. There must be probable cause to search the containers within an automobile. *California v. Acevedo*, 500 U.S. at 580; *United States v. Ross*, 456 U.S. at 823-824.

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[2] Petitioner argues an automobile is a large container but does not support this proposition with any authority. The suggestion leads to preposterous results; can the apartments in a building be searched as smaller containers within a larger container?

The Petitioner also challenges the validity of the Wyoming Supreme Court's ruling because the notice test is analogous to premises search law. This challenge ignores the basis for the automobile exception which is to relax the warrant requirement because of the mobility of the vehicle. *See United States v. Ross*, 456 U.S. 798, 820 (1982). The automobile exception does not change the probable cause requirement. Probable cause must exist that contraband will be found before the search can commence regardless of whether the container is located in fixed premises or in a vehicle.

The Petitioner is also incorrect in asserting that a single rule which governs premises and automobile searches is unprecedented. *New York v. Belton*, 453 U.S. 454, 457-459 (1981), is based, in part, upon the law governing premises searches following a custodial arrest. *Ross* specifically relies on the scope of premises searches in defining the scope of a permissible automobile search. *United States v. Ross*, 456 U.S. at 820-821. Premises search law has been influential in the development of automobile search law because "the Fourth Amendment protects people, not places." *Katz v. United States*, 389 U.S. at 351.

Relying on *Ross*, Petitioner argues a warrant would allow the search of "rooms, closets and drawers of 'nonsuspect' occupants of the home." (Brief of Petitioner, p. 22). Petitioner offers no authority for this assertion in its brief. This statement ignores the particularity and probable cause requirements of the Fourth Amendment and assumes a search incident to the execution of a warrant could be extended to the personal effects of nonsuspects.

While some lower courts have held such searches reasonable, the Wyoming Supreme Court analyzed those cases and opposing cases which found such searches unreasonable, and adopted the reasoning that such a search is unreasonable when the officer knows or should know the personal effects do not belong to the person for whom the search warrant was issued. (Pet. App. 9-15). The Wyoming Supreme Court's reasoning is consistent with *Ybarra v. Illinois*, 444 U.S. 85 (1979), in which this Court held the search of a person must be based on particularized probable cause and cannot be justified by the person's mere presence on the premises where there is probable cause to search.

The Wyoming Supreme Court's opinion embraces this Court's holdings requiring individualized suspicion and probable cause to search the personal belongings of an individual. Petitioner asks this Court to allow the police to invade the privacy of persons who are not suspected of criminal activity. The State has presented no legitimate reason to justify this type of intrusion. The request is contrary to this Court's holdings in *Carroll*, *Ross* and *Acevedo* and must be rejected.

ARGUMENT II

The Fourth Amendment requires that the scope of the exception to the warrant requirement not exceed the exception.

The plain text of the Fourth Amendment prohibits searches that are unreasonable. U.S. Const., amend. IV. A "warrantless search must be commensurate with the

rationale that excepts the search from the warrant requirement." *Cupp v. Murphy*, 412 U.S. 291, 295 (1973). Accordingly, "[t]he scope of [a] search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible." *New York v. Belton*, 453 U.S. 454, 457 (1981), quoting *Chimel v. California*, 395 U.S. 752, 762 (1969), quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968).

The degree of intrusion permitted under a search incident to an exception to the warrant requirement depends at least in part on the nature of the government's need for the exception. *See New Jersey v. T.L.O.*, 469 U.S. 325, 337 (1985) ("The determination of the standard of reasonableness governing any specific class of searches requires balancing the need to search against the invasion which the search entails"). Where the police have probable cause to believe that a crime has been committed and that a particular individual is the one who has committed it, the government may need to search the area where the individual is discovered in order to preserve evidence of the crime. In contrast, where the police lack the information necessary to arrest an individual whom they are investigating, the government has less need to invade that person's privacy to preserve evidence of a crime.

That the scope of a warrantless search incident to arrest may under certain circumstances be broader than the scope of a search under any other exception to the warrant requirement, including the automobile exception, is intentional. It is entirely consistent with and compelled by the notion that the Fourth Amendment limitation on the degree the police can invade the privacy rights of a citizen is in accordance with the government's need to do so. *New Jersey v. T.L.O*, 469 U.S. at 337.

It is not true that *Belton* compels the conclusion that the police could have searched Ms. Houghton's purse if Young had been arrested. *Belton* involved the search of a jacket that belonged to a person who had been arrested. Ms. Houghton had not been arrested at the time her purse was searched. Petitioner's claim that this Court would extend *Belton* to authorize warrantless searches of containers that the police know belong to unarrested persons is pure speculation. Some lower courts have concluded that extending *Belton* to passengers who are not arrested violates the Fourth Amendment. *E.g., Commonwealth v. Knoche*, 678 A.2d 395 (Pa.Super. 1996); *Commonwealth v. Shiflet*, 543 Pa. 164, 670 A.2d 128 (Pa. 1995); *State v. Gilberts*, 497 N.W.2d 93 (N.D. 1993). If this Court is ready to extend *Belton* to permit the scope of a search incident to arrest to encompass articles belonging to persons other than the arrestee where the search preceded the arrest, the facts of this case do not present the proper opportunity to do so. Where this Court has been confronted in the past with a record which fails to establish that an arrest preceded a search, it has declined to apply the search incident to arrest doctrine. *Texas v. Brown*, 460 U.S. 730, 734 n.2 (1983).

If this Court finds that *Belton* extends to passengers, the search incident to arrest exception must remain distinct from the automobile exception. In *Belton*, the jacket belonged to a passenger who had been arrested. *Belton* is a case about the scope of a search incident to arrest. When an encounter between an officer and a suspect has escalated to the point of arrest, concerns such as officer safety face the arresting officer. These concerns justify a

search incident to arrest. These concerns are not implicated in an automobile search where no arrest occurs.

Searches are permitted under the search incident to arrest doctrine only if there actually has been an arrest. *Sibron v. New York*, 392 U.S. 40, 63 (1968) ("[I]t is axiomatic that an incident search may not precede an arrest and serve as part of its justification"). If one were allowed to bootstrap the legitimacy of a search as a search incident to arrest with the very fruits of a search that preceded the arrest, it would render the Fourth Amendment a nullity. 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE, § 5.4(a) (3rd ed. 1996).

This case differs from *Rawlings v. Kentucky*, 448 U.S. 98 (1980). In *Rawlings*, the police had probable cause to arrest the defendant before he was searched; consequently, the fruits of the search of the defendant were not necessary to support the probable cause to arrest him. 448 U.S. at 111 n.6.

In this case, there was no arrest of the driver (the person suspected of criminal activity) and Ms. Houghton was not arrested prior to the search. There was no basis to arrest Ms. Houghton before her purse was improperly searched. Accordingly, the doctrine of search incident to arrest is simply irrelevant to the case before the Court. *Texas v. Brown*, 460 U.S. at 734 n.2; *Sibron v. New York*, 392 U.S. at 63.

Petitioner's assertion that a search incident to arrest would have allowed the search of Ms. Houghton's purse is a speculative conclusion not based on this Court's precedent. Search incident to arrest is an exception to the warrant requirement which allows a warrantless search

following an arrest. This Court has not extended that exception to include passengers who are not suspected of criminal activity and the facts of this case do not support such an extension. The automobile exception allows a search if the officer has probable cause to believe contraband will be found. The scope of the search is limited to all containers in the automobile in which the officer has probable cause to believe the contraband has been hidden. *United States v. Ross,* 456 U.S. at 824; *California v. Acevedo,* 500 U.S. at 579-580.

There is no anomalous disparity between these two searches. They are two separate and distinct exceptions to the warrant requirement. In this case, the Petitioner used the automobile exception to justify the search. The Wyoming Supreme Court rejected that justification. Since the Wyoming Supreme Court's opinion complies with the mandates of the Fourth Amendment, *see* Argument I, *supra,* it should not be disturbed based on an unsupported assertion that the search would have been allowed pursuant to a different exception.

ARGUMENT III

The Wyoming Supreme Court's holding imposes no new burdens on police, nor does it change current police standards.

This Court has consistently held that the Fourth Amendment proscribes all unreasonable searches. *Katz v. United States,* 389 U.S. 347, 357 (1967); *United States v. Ross,* 456 U.S. 798, 824-825 (1982); *Mincey v. Arizona,* 437

U.S. 385, 390 (1978). This Court has held that all warrantless searches are unreasonable, *per se*, unless the search can be justified under one of the well-delineated exceptions to the warrant requirement. *Id.* The justification of a warrantless search depends on what the searching officer knew at the time of the search and what facts validate the search.

The question becomes, what must law enforcement personnel do when they know certain facts before the inception of the search that would render the search unreasonable? The answer is undoubtedly that the search may not continue once the officers know they are infringing upon a person's right to privacy when they do not suspect criminal activity. The standard applied by the Wyoming Supreme Court is merely the expression of a concept implicit in this Court's Fourth Amendment jurisprudence.

Regardless of Petitioner's characterization, police already use the notice test in their day-to-day law enforcement activities. Police officers approach encounters with citizens by deciding whether they suspect the person of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). If an officer suspects that an automobile driver is engaging in criminal activity, the officer may search the driver's automobile for evidence of that activity, including all containers which may contain the evidence sought. If the officer finds a container he does not have probable cause to believe contains such evidence, he cannot search that container. *California v. Acevedo*, 500 U.S. at 580; *United States v. Ross*, 456 U.S. at 823-824. When an officer becomes aware of facts which invalidate the search, he is required to pause in the search. If the search continues

despite the knowledge, the search is considered unreasonable. *E.g., Smith v. United States*, 335 F.2d 270, 274, n. 11 (D.C. 1963) (search invalidated because of officer's imputed knowledge of car ownership); *United States v. Ramirez*, 112 F.3d 849, 852 (7th Cir. 1997) (if a mistake is discovered questioning the validity of a wiretap warrant, law enforcement may not use the authority of the warrant to conduct a search); *State v. Herrin*, 915 P.2d 953, 956 (Or. 1996) (search of car driven by defendant invalidated, in part, because of officer's knowledge of only passengers as possessors of drugs or paraphernalia).

Pursuant to the Wyoming Supreme Court's holding, the searching officer may search all containers unless he knows or should know that the container to be searched does not belong to the suspect and he does not have reason to believe that the suspect placed the object of the search in the nonsuspect's container. The focus of Wyoming's holding integrates effective law enforcement with the protection of individual rights. The holding is only applicable where there is no generalized probable cause for everyone in the vehicle and does not prevent any searches; it merely forces the searching officer to recognize that he may not invade a citizen's privacy where there is no constitutional justification for the intrusion. The test imposes no new burdens upon police officers. Nowhere in this Court's jurisprudence is there any sanction of a search incident to the automobile exception to the warrant requirement in the plain and obvious absence of probable cause. The searching officer readily admitted on the record that he did not see anything prior to the search that would give him probable cause to believe that

Ms. Houghton was using drugs, and therefore could be searched as thoroughly as Young. (J.A. 21).

In this Court's previous Fourth Amendment opinions, with particular attention to the automobile exception to the warrant requirement, this Court has underscored that the determination of the reasonableness of a search necessarily contains an inquiry whether the searching officer had probable cause to justify the warrantless search. The searching officer in this case not only knew he did not have probable cause to search Ms. Houghton, but also knew that the container he wanted to search did not belong to Young.

The Wyoming Supreme Court's holding is an expression of this Court's prior holdings requiring probable cause and individualized suspicion before a search can be justified. While the exceptions to the warrant requirement focus on what would validate a warrantless search, the Wyoming Supreme Court's holding helps the officer recognize when a warrantless search becomes invalid and should cease. This protects the individual's right to privacy and provides a workable tool for law enforcement during automobile searches when passengers are present.

CONCLUSION

Ms. Houghton respectfully requests that this Court affirm the Wyoming Supreme Court's holding that the search of a person's personal belongings who is not suspected of criminal activity is an unreasonable search under the Fourth Amendment.

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In The

Supreme Court of the United States

October Term, 1998

THE STATE OF WYOMING,

Petitioner,

v.

SANDRA HOUGHTON,

Respondent.

On Writ Of Certiorari
To The Wyoming Supreme Court

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SUMMARY OF THE ARGUMENT

Respondent's primary contention is that the search of a container under the automobile exception must be based on probable cause specific to the container or its owner. The plain language of *United States v. Ross*, 456 U.S. 798 (1982), and *California v. Acevedo*, 500 U.S. 565 (1991), however, refutes any notion that this is the rule. Respondent's view of the automobile exception would also abolish the concept of probable cause to search a car generally, absent the unusual situation where each occupant of the vehicle has independently furnished the officer probable cause to search.

Respondent's perceived need for probable cause specific to each item searched under the automobile exception is also refuted by the law of searches of residential premises, where the individual expectation of privacy is much higher. A doctrine known as the "community occupation situation" has developed which involves several occupants sharing a single residence. A search warrant for the residence based on the unlawful activities of just one occupant may validly be directed at the entire residence and its execution will permit the search of places and containers belonging to the nonsuspect occupants.

It must also be recognized that respondent's support for the rule adopted by the Wyoming Supreme Court is inconsistent with her position that there must be individualized probable cause as to each container searched under the automobile exception. Under the "notice" test adopted by the court, it is permissible to search containers without individualized probable cause absent

notice that the container belongs to a nonsuspect occupant of the car.

Finally, respondent's reliance on cases dealing with probable cause to search a person has no application to the search of a container under the automobile exception.

ARGUMENT I

Respondent's insistence that there must be individualized probable cause for each container searched under the automobile exception is incorrect. It is sufficient that there is probable cause to search the automobile generally and that any container searched is capable of holding the object of the search.

The rule formulated in *United States v. Ross*, 456 U.S. 798 (1982), and *California v. Acevedo*, 500 U.S. 565 (1991), to govern searches under the automobile exception is, by this Court's description, "one rule to govern all automobile searches." *Acevedo*, 500 U.S. at 580. It provides, comprehensively and unambiguously, "If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." *Ross*, 456 U.S. at 825. Respondent and her *amici*, however, insist that an entirely different rule governs automobile searches: The scope of a search under the automobile exception is limited to places and items for which there is specific probable cause to believe contraband will be found. (Brief of Respondent, p. 2).

Respondent reads *Ross* and particularly *Acevedo* to stand for the proposition that "only containers which the

officer has probable cause to believe contain contraband may be searched." (Brief of Respondent, p. 9). *Acevedo*, however, involved a situation where police had probable cause to believe a particular package contained contraband before it was placed in a car. They had no probable cause to believe the car otherwise contained any contraband. In such a situation, placing the package in the car did not supply probable cause to search the car generally. *Acevedo*, 500 U.S. at 566-68, 580. The situation here, of course, is quite different because the officer did have probable cause to search the car generally.

Respondent has also misplaced her reliance on the language in *Ross* that the scope of a warrantless automobile search "is defined by the object of the search and the places in which there is probable cause to believe it may be found." 456 U.S. at 824. By this the Court did not mean that there must be probable cause specific to each container searched. As the language immediately following that sentence makes clear,[1] the Court was only indicating that when probable cause is limited to finding evidence in one place only, an officer may not search for it elsewhere, nor in places where it could not physically be located, and that when probable cause to search is confined to a single container the search itself is limited

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[1] The language reads: "Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. Probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab." 456 U.S. at 824.

to that container. Here again the situation is different because Officer Baldwin's probable cause to search was not confined to a single location or container inside the car; he had probable cause to search the car generally.

Not only does respondent misread *Ross* and *Acevedo*, her interpretation of the rule governing automobile searches abolishes the traditional concept that police are entitled to perform a general search of a vehicle and its contents when they have "probable cause [ ] to believe that the vehicle is transporting contraband." *Ross*, 456 U.S. at 823; *Carroll v. United States*, 267 U.S. 132, 162 (1925). Instead, according to respondent, probable cause to perform a complete search of the car and its contents exists only where there is probable cause specific to every person in the vehicle. (Brief of Respondent, p. 18). When there is probable cause specific to fewer than everyone in the car, only those areas and articles directly associated with individual suspects may be searched. This surely was not the intendment of *Ross* and *Acevedo*. The Court could not have been unmindful of the fact that private vehicles often have more than one occupant and that the occupants will typically have personal belongings with them. If the Court had wanted to declare that containers may not be searched absent probable cause specific to the container, as respondent desires, it certainly would not have used the language it did.

Once it is established that there is "probable cause [ ] to believe that the vehicle is transporting contraband," *Ross*, 456 U.S. at 823, the object or unit subject to being searched is the automobile itself, along with the articles inside that could hold the object of the search. Indeed, in this case, respondent admitted below and the Wyoming

Supreme Court agreed that the drug related evidence developed through Young supplied probable cause to perform a general search of the automobile. (Pet. App. 5, 6, 21). Respondent's attempt to limit Officer Baldwin's probable cause, and concomitantly the scope of the vehicle search, to just Young (Brief of Respondent, pp. 7-10) must be rejected.

ARGUMENT II

Even in the case of a residential search, where the expectation of privacy is higher than in an automobile, the personal places and belongings of nonsuspects are within the scope of a search warrant.

Respondent maintains that the requirement of individualized suspicion needed to search a person's belongings also applies to searches of residential premises, a place where the expectation of privacy is greater than in a vehicle. *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976). Just as with automobile occupants, the personal effects of nonsuspect occupants of a home are beyond the lawful scope of a search, according to respondent. (Brief of Respondent, pp. 11-12). This argument, however, is plainly incorrect.

In 2 Wayne R. LaFave, *Search and Seizure*, § 4.5(b) at 532-33 (3rd ed. 1996), Professor LaFave discusses the "community occupation situation," where several persons occupy residential premises jointly rather than individually, sharing common living quarters although maintaining separate bedrooms. Even if only one of the occupants in such an arrangement supplies the probable

cause for a search warrant, a warrant directed at the entire premises is valid and will justify a search of every part of the place not secured against access by others. Professor LaFave offers an example:

> [I]f three persons share an apartment, using a living room, kitchen, bath and hall in common but holding separate bedrooms which are not locked, whichever one of the three is responsible for the described items being in the apartment could have concealed those items anywhere within, including the bedrooms of his cotenants.

Id. at 533 (footnote omitted). Illustrative of the numerous cases cited in support of the proposition is *United States v. Ayers*, 924 F.2d 1468 (9th Cir. 1991), where police developed probable cause to believe Eric Ayers was dealing drugs and lived at the residence of his father, Eddie Ayers. A search warrant was issued for the entire residence based on Eric's drug activities. Police searched the bedroom closet of the father and discovered a large amount of cash, leading to charges of income tax evasion. The court ruled the warrant and its execution were valid, notwithstanding that it was issued and directed at the illegal activities of just one of several occupants.

It is therefore apparent in the case law pertaining to nonsuspect occupants of both automobiles and residential premises that the status of being a "nonsuspect" does not shield a person's private space or possessions from inspection during a search of the larger area where those places and items are located. *See* Brief of Petitioner, cases cited at pp. 25-28. If police have probable cause to search a distinct unit of space, whether that space is defined by

the physical boundaries of an automobile, house or apartment, they are entitled to search the entire space, including articles and objects therein that belong to nonsuspects but which nevertheless could hold the object of the search. *Ross*, 456 U.S. at 821-22.

ARGUMENT III

Respondent's claim that individualized probable cause is needed to search a container in an automobile is inconsistent with her support of the rule adopted below, which, under some circumstances, allows a container to be searched on mere presumption and without individualized probable cause.

As discussed in Argument I, respondent and her *amici* insist there can be no search of a container under the automobile exception unless the officer has specific probable cause to believe the container holds the object of the search. At the same time, however, respondent and her *amici* support the "notice test" adopted by the Wyoming Supreme Court. (*See, e.g.*, Brief of Respondent, pp. 5-12, 16-19; Brief of The Legal Aid Society of New York City and The National Legal Aid and Defender Association, pp. 23-27; Brief of National Association of Criminal Defense Lawyers, pp. 3, 25). The difficulty with supporting both propositions is that one violates the other.

Under the "notice" test adopted by the Wyoming Supreme Court, "once probable cause is established to search a vehicle, an officer is entitled to search all containers therein which may contain the object of the search." (Pet. App. 21). This initial presumption (*Id.* at 15, 16) permitting a search of all containers is dispelled only

when the officer knows or should know that a container belongs to a nonsuspect passenger and there was no opportunity to conceal the contraband in the container to avoid detection. (*Id.* at 21-22). The rule therefore permits a search of a container belonging to a nonsuspect passenger, without probable cause specific to the container, where the officer does not know and should not be charged with the knowledge that the container belongs to a nonsuspect.

The Wyoming Supreme Court recognized that at times the rule will allow suspicionless searches of containers belonging to nonsuspects, and that this would "abrogate individualized Fourth Amendment protection," but concluded that it would not do so "unnecessarily." (Pet. App. 17). If respondent and her *amici* insist that the scope of a search under the automobile exception must always be confined to containers for which there is individualized probable cause, they should not support affirmance of a rule that violates that principle. From this it may be concluded that the search of a container under the automobile exception does not require individualized probable cause after all, even under respondent's view of the Fourth Amendment.

ARGUMENT IV

Cases involving searches of the person have no application to the search of a container under the automobile exception.

Respondent and her *amici* invoke the authority of several cases from this Court dealing with searches of the

person in an effort to establish the proposition that the search of the purse in this case was unlawful. Respondent relies chiefly on *United States v. Di Re*, 332 U.S. 581 (1948) (rejecting government argument that probable cause to search a car for contraband confers an incidental right to search an occupant of the car when the contraband sought is of a character that it might be concealed on the person); *Sibron v. New York*, 392 U.S. 40 (1968) (suspect's association with known narcotic addicts, without more, furnished no grounds for arrest or seizure of contraband from his person); and *Ybarra v. Illinois*, 444 U.S. 85 (1979) (warrant to search the premises of a tavern and the person of the bartender did not permit pat down search of a patron not suspected of possessing weapon; routine evidence search of person who is present on premises being searched not permitted). None of these cases support respondent's position. Likewise, respondent will find no support in this Court's recent automobile search case, *Knowles v. Iowa*, No. 97-7597, 1998 WL 840933 (U.S. Dec. 8, 1998) (issuance of citation in lieu of arrest does not permit search of car same as if arrest had occurred).

When a person is searched or seized on the basis of probable cause, the probable cause must be particularized to that person. *Ybarra*, 444 U.S. at 91. As discussed herein, searches of containers found in automobiles and on premises typically do not require such particularity, and this case involves no issue concerning the search of a person. The issue here is the scope of a search under the automobile exception as it pertains to containers found inside a vehicle. The particularity requirement for a search of the person is reasonable in its own context. In the case of an automobile, however, requiring specific

probable cause as to each container searched defeats the validity of the original probable cause to search the vehicle and virtually nullifies the automobile exception.

CONCLUSION

The judgment of the Wyoming Supreme Court should be reversed and the case remanded for consideration of the remaining issues.

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In the Supreme Court of the United States

OCTOBER TERM, 1998

WYOMING, PETITIONER

v.

SANDRA HOUGHTON

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WYOMING

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether police officers who have probable cause to conduct a warrantless search of a car for contraband may search all containers within the car that could conceal the contraband, even if those containers may belong to passengers whom the police do not have probable cause to arrest.

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In the Supreme Court of the United States

OCTOBER TERM, 1998

No. 98-184

WYOMING, PETITIONER

v.

SANDRA HOUGHTON

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WYOMING

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE UNITED STATES

This case presents the question whether the Fourth Amendment permits police officers who have probable cause to search a car for evidence of a crime to open any container in the car that could hold such evidence, even if the container may belong to a passenger whom the police officers do not have probable cause to arrest for a crime. The United States has a significant law-enforcement interest in assuring that the rule of *United States* v. *Ross*, 456 U.S. 798 (1982), which provides that police officers who have probable cause to search a motor vehicle may search all containers within the vehicle that could conceal the object of the search, is not undermined by the sorts of distinctions drawn by the

court below concerning the ownership of such containers.

STATEMENT

After trial in Wyoming district court, respondent Sandra Houghton was convicted of felony possession of methamphetamine, in violation of Wyoming Statutes Annotated § 35-7-1031(c)(iii) (Michie 1996). She was sentenced to a term of imprisonment of not less than two years or more than three years. The Wyoming Supreme Court reversed the conviction. Pet. App. 4-5, 21-22.

1. In the early morning hours of July 23, 1995, Officer Robert Delane Baldwin of the Wyoming Highway Patrol stopped a 1977 Cadillac for speeding and a burned-out brake light. The car was driven by David Young. The car had two passengers, both women, who were sitting in the front seat. Pet. App. 2; J.A. 135-137.

Officer Baldwin observed a hypodermic syringe in Young's shirt pocket. Officer Baldwin ordered Young to step outside the car and to place the syringe on the hood. When Officer Baldwin asked Young why he was carrying the syringe, Young replied that he used the syringe to take illegal drugs. Officer Baldwin, assisted by two other officers, directed the passengers to leave the car and to provide identification. Houghton, who gave her name as "Sandra James," stated that she did not have any identification with her. Pet. App. 3; J.A. 138-142.

Officer Baldwin then began to search the passenger compartment of the car for narcotics, based on Young's possession of the syringe and his admission that he had used it to inject drugs. Officer Baldwin found what he described as a "cloth lady's purse" near the middle of the back seat, "somewhat on the driver's side" as op-

posed to the passenger's side. He opened the purse and removed a wallet, which contained Houghton's driver's license. Houghton then identified the purse as hers. She stated that she had given a false name "in case things went bad." Pet. App. 3-4; J.A. 142-145, 173.

Officer Baldwin continued to search the purse, in which he found a brown bag. He opened the brown bag to find a syringe that contained an estimated 60 cubic centimeters of liquid, which field-tested positive for methamphetamine. The brown bag also held additional syringes, razor blades, and other drug paraphernalia. Officer Baldwin then noticed fresh needle track marks on Houghton's arms. He arrested Houghton for possession of a controlled substance. He completed his search of the purse, discovering a smaller black bag, which also contained syringes, razor blades, and other drug paraphernalia. Young and the second passenger were allowed to go. Pet. App. 4; J.A. 148-151, 158-159, 169.

2. Houghton was charged with one count of possession of methamphetamine in a liquid amount greater than three-tenths of a gram, in violation of Wyoming Statutes Annotated § 35-7-1031(c)(iii) (Michie 1996). J.A. 4.

Before trial, Houghton moved to suppress all evidence seized during the search of the car, contending that the search violated her rights under the Fourth and Fourteenth Amendments, as well as under the Wyoming Constitution. The district court denied the motion. The court reasoned that when a law-enforcement officer has probable cause to believe that contraband is somewhere within a car, the officer may search the car and any containers in the car, including a passenger's purse. Pet. App. 4; J.A. 12-13, 27-28.

The jury found Houghton guilty of the methamphetamine possession offense. Pet. App. 4; J.A. 269-270.

3. The Wyoming Supreme Court, by a three-to-two vote, reversed Houghton's conviction. Pet. App. 1-25.

a. The majority noted that Houghton did not contest that the Highway Patrol officers had probable cause to search Young's car for evidence of illegal narcotics. Pet. App. 6. The issue before the court was thus whether the officers' probable cause to search the car for narcotics justified a search of any object in the car that was capable of containing narcotics, even if the object belonged to a passenger whom the officers had no probable cause to believe was involved in a narcotics offense. *Ibid.*

The court noted that "[t]he scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause." Pet. App. 7 (quoting *United States* v. *Ross*, 456 U.S. 798, 823 (1982)). The court then concluded that, if the officers had obtained a warrant authorizing the search of Young's car for narcotics, a search of the personal belongings of his passengers would not have been within the scope of the warrant. *Id.* at 17-19.

The court reached that conclusion by relying not on cases involving automobile passengers, but on cases, such as *Ybarra* v. *Illinois*, 444 U.S. 85 (1979), involving visitors to fixed premises. The court discussed the various tests adopted by the lower courts for determining whether a search of a person, or his personal effects, was within the scope of a warrant to search the premises that the person was visiting. Pet. App. 8-15. The court adopted what it termed "the 'notice' test" under which such a warrant does not permit police officers to search personal effects that they know or should know belong to a visitor, unless "[s]omeone within the premises had the opportunity to conceal the

contraband within the personal effects of the visitor immediately prior to the execution of the warrant." *Id.* at 15-16 (quoting *State* v. *Thomas*, 818 S.W.2d 350, 359 (Tenn. Crim. App. 1991)). The court concluded that the officers in this case should have known that the purse did not belong to Young, the male driver, who was the only person whom the officers had reason to believe possessed narcotics in the car. *Id.* at 17-18. The court further concluded that the officers had no probable cause to believe that narcotics were placed in the purse immediately before the car was stopped. *Id.* at 18. The court therefore concluded that the search of the purse was not "within the scope of the search of Young's car," and that the evidence obtained from the search of the purse should have been suppressed. *Id.* at 18-19.

b. The dissenting justices argued that the majority had created an unwarranted exception to the "settled principle[]" that, when police officers have probable cause to search a motor vehicle, they may search "the entire vehicle and anything in it that could contain the items being searched for." Pet. App. 23, 24 (citing *United States* v. *Ross*, *supra*; *Carroll* v. *United States*, 267 U.S. 132 (1925)). The dissent argued that Houghton's purse could have contained the controlled substance that was the object of the search of Young's car, since "[c]ommon sense tells us that the transfer of small containers of controlled substances between an automobile's occupants can occur swiftly, silently, effortlessly, and without detection by even the keenest observer." *Id.* at 25.

SUMMARY OF ARGUMENT

This Court has long recognized that, when the police have probable cause to suspect that evidence of a crime is concealed within an automobile that they have

stopped along a public roadway, the police may search the automobile immediately without obtaining a warrant from a magistrate. *Carroll* v. *United States*, 267 U.S. 132, 149, 153-154 (1925). A search conducted under the "automobile exception" to the warrant requirement may be as broad in scope as the search that a magistrate could have authorized by a warrant. The police may thus search "every part of the vehicle and its contents that may conceal the object of the search," including "compartments and containers within the vehicle whose contents are not in plain view." *United States* v. *Ross*, 456 U.S. 798, 800, 825 (1982).

There is no basis for creating an exception to that rule for those containers that are claimed by passengers whom the police do not have probable cause to arrest for a crime. To the contrary, it is reasonable to assume that a passenger's purse, bag, or other container, if physically capable of holding the object of the search, is as likely a receptacle as any other compartment or container in the automobile. This Court's cases demonstrate that the occupants of a private automobile, who are necessarily involved in the common activity of traveling together from one place to another, often are also involved in common activity relating to the object of the search. And, even if a passenger is not aware of the presence of the object within the automobile, the object still could easily have been placed among his belongings. Any container in an automobile may be assumed to be accessible to all occupants, driver and passengers alike, given the close confines of the vehicle and the occupants' opportunities to gain entry to one another's belongings in the course of travel.

The Wyoming Supreme Court did not consider the special characteristics of automobile travel in concluding that the police could not search a passenger's

property unless they had probable cause to arrest the passenger. The court instead relied on cases involving searches of houses, places of business, and other fixed premises. See, *e.g.*, *Ybarra* v. *Illinois*, 444 U.S. 85 (1979). Searches of those places, however, involve different considerations than searches of automobiles stopped in transit, and the analysis of those cases does not apply here.

The Wyoming Supreme Court recognized that its decision would require the police to draw distinctions among the containers found in an automobile, based on whether a container could reasonably belong to the driver (or someone else whom they have probable cause to arrest) as opposed to a passenger. Such distinctions are without support in this Court's decisions under the Fourth Amendment. In *Ross*, the Court concluded that the drawing of "nice distinctions" among the containers found in an automobile, based in that case on whether the owner had evinced a reasonable expectation of privacy in their contents, would be antithetical to the Fourth Amendment and to the needs of "prompt and efficient" law enforcement. 456 U.S. at 821-822.

The application of the rule of *Ross* to all containers found in an automobile, without any exception based on their ownership, is consistent with the Court's decisions on Fourth Amendment rights in the automobile context. The Court has recognized that an individual has a diminished expectation of privacy in his person and effects when he is in a car. That is true whether he is a driver or a passenger. See, *e.g.*, *Maryland* v. *Wilson*, 519 U.S. 408 (1997) (passengers, as well as the driver, may be required to exit a car during a traffic stop). And quite apart from the rule in *Ross*, a passenger's interest in avoiding a search of his belongings is overcome when the police make a probable cause arrest of the driver or

any other occupant of the car. *New York* v. *Belton*, 453 U.S. 454 (1981) (search incident to arrest may extend to the entire passenger compartment and all containers in it). It would be anomalous if the same sort of search of an automobile passenger's belongings that occurred in this case—although permissible under *Belton* as part of a search incident to the arrest of the driver or another passenger—would nonetheless be impermissible as part of a search of the automobile based on probable cause to believe that it contains evidence of a crime.

ARGUMENT

POLICE OFFICERS WHO HAVE PROBABLE CAUSE TO SEARCH AN AUTOMOBILE FOR EVIDENCE OF A CRIME MAY OPEN ANY CONTAINER IN THE AUTOMOBILE THAT COULD CONCEAL THAT EVIDENCE, WITHOUT REGARD TO WHICH OCCUPANT OF THE AUTOMOBILE OWNS THE CONTAINER

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. When police officers have probable cause to search an automobile stopped along a public roadway, the search is not "unreasonable," within the meaning of the Fourth Amendment, even though the police have not obtained a warrant from a magistrate. The possession of probable cause to believe that the automobile contains evidence of a crime is sufficient to justify the search. *Carroll* v. *United States*, 267 U.S. 132. 149, 153-154 (1925)) (Fourth Amendment permitted federal agents, who had probable cause to believe that illegal liquor was being transported in an automobile, to search throughout the automobile for the liquor);

Chambers v. *Maroney*, 399 U.S. 42, 48-50 (1970) (citing multiple cases applying that rule). The Court has offered two justification for what has come to be known as the "automobile exception" to the search warrant requirement: the "ready mobility" of automobiles, which can cause any "opportunity to search [to be] fleeting," and the "lesser expectation of privacy" that exists in an automobile, as a result of "the pervasive regulation of vehicles capable of traveling on the public highways." *California* v. *Carney*, 471 U.S. 386, 390-392 (1985); accord *Pennsylvania* v. *Labron*, 518 U.S. 938, 940 (1996) (per curiam).

The rule permitting a warrantless search of an automobile based on probable cause extends to closed containers within the automobile. The Court has held that, when the police "have legitimately stopped an automobile" and "have probable cause to believe that contraband is concealed somewhere within it," they "may conduct a probing search of compartments and containers within the vehicle whose contents are not in plain view," so long as those compartments and containers "may conceal the object of the search." *United States* v. *Ross*, 456 U.S. 798, 800, 825 (1982); accord *United States* v. *Johns*, 469 U.S. 478, 479-480 (1985) ("if police officers have probable cause to search a lawfully stopped vehicle, they may conduct a warrantless search of any containers found inside that may conceal the object of the search"); *California* v. *Acevedo*, 500 U.S. 565, 570 (1991) (the rule authorizing warrantless searches of containers in cars applies whether the probable cause is focused on the car as a whole or on a particular container in the car).

Contrary to the holding of the Wyoming Supreme Court, there is no valid basis for carving out an exception to that rule for purses, bags, and other containers

that belong to automobile passengers whom the police do not have probable cause to arrest. Such an exception would conflict with the Court's rationale in *Ross*, which relieved the police from having to stop to draw "nice distinctions" based on the particular characteristics of containers found in cars. 456 U.S. at 821. It would also undermine the objective of providing "clear-cut rule[s]" to guide the law-enforcement community in the conduct of automobile searches. *Acevedo*, 500 U.S. at 579.

A. The Rationale Of *Ross* Applies To All Containers In A Car That Could Conceal The Object Of The Search, Regardless Of Who Owns The Container

The Court held in *Ross* that the permissible "scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause." 456 U.S. 823; accord *id.* at 800 (warrantless search of a car based on probable cause may be "as thorough as a magistrate could authorize in a warrant"). Accordingly, because "[a] warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search," including closed containers within the vehicle, *id.* at 821, a warrantless search of a vehicle based on probable cause may be equally broad, extending to "every part of the vehicle and its contents that may conceal the object of the search," *id.* at 825.

The Court explained that it would be "absurd" to allow the police to conduct a thorough search of the automobile itself—even ripping open its upholstery, as they did in *Carroll*—but to disallow searches of closed compartments and containers, which are the most common places for contraband to be secreted within an automobile. *Ross*, 456 U.S. at 818-819. As the Court

observed, because contraband goods "by their very nature * * * must be withheld from public view," they "rarely are strewn across the trunk or floor of a car," but instead are "enclosed within some form of container." *Id.* at 820.

Because a warrant to search a private automobile for narcotics would support a search of anything in the automobile "that may conceal the object of the search," *Ross*, 456 U.S. at 825, a warrantless search of the same automobile based on probable cause to believe that it contains narcotics has the same valid scope. The class of items that "may conceal" narcotics includes any purse, bag, or other such container that is found in the car during the search.[1]

A search of such a container is not invalid because it may belong to an occupant of the car whom the police lack probable cause to believe is linked to the suspected illegal activity. Although the probable cause for the search may have arisen from the actions of the driver, the passenger's container, so long as it is physically capable of concealing the narcotics, is as likely a receptacle for them as any other container in the car.[2] There

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[1] If probable cause exists only as to a particular container in an automobile, of course, and "the police d[o] not have probable cause to believe that contraband [is] hidden in any other part of the automobile[,] * * * a search of the entire vehicle would * * * be [] without probable cause and unreasonable under the Fourth Amendment." *Acevedo*, 500 U.S. at 580; *Ross*, 456 U.S. at 824.

[2] Other appellate courts have recognized that, under *Ross*, when law-enforcement officers have probable cause to search a vehicle for contraband, they may search passengers' purses, bags, and other belongings that could contain the contraband, even when the evidence providing probable cause relates only to the driver or to other passengers. See, *e.g.*, *People* v. *McMillon*, 892 P.2d 879, 882-883 (Colo. 1995) (officers who had probable cause to search car for narcotics, based on driver's prior drug convictions and presence

are two "practical considerations" relating to automobile travel, *Ross*, 456 U.S. at 820, that underscore the reasonableness of that belief.

First, when people are traveling together by private automobile, they are necessarily engaged in one common consensual activity, *i.e.*, going from one point to another, by a particular route, at a particular time. It is not unreasonable to assume that they may also be engaged in other common activity associated with that travel—whether sightseeing, running errands, attending a social event or conducting business of a legal or an illegal nature—and that items associated with that common activity may be stored in one person's purse, baggage, or other container. Many of this Court's cases involving vehicle searches, from *Carroll* to *Chambers* to *Johns*, confirm that companions in travel may also be partners in crime.

That assumption is reflected in this Court's recent opinion in *Maryland* v. *Wilson*, 519 U.S. 408 (1997), which held that a police officer may order the passengers as well as the driver out of a car during a traffic stop, because "the fact that there is more than one occupant of the vehicle increases the possible sources of harm to the officer." *Id.* at 413. The Court recognized that "the possibility of a violent encounter stems not from the ordinary reaction of a motorist stopped for a speeding violation, but from the fact that evidence of a more serious crime might be uncovered during the stop." *Id.* at 414. And in that circumstance,

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of syringe between driver's seat and center console of car, could search passenger's purse); *State* v. *Fix*, 730 P.2d 601, 604 (Ore. Ct. App. 1986) (officers who had probable cause to search truck for guns, based on information that driver and male passenger had threatened persons with guns, could search female passenger's purse).

said the Court, "the motivation of a passenger to employ violence to prevent apprehension of such a crime is every bit as great as that of the driver." *Ibid.* The Court thus implicitly recognized that, when evidence of a crime exists in an automobile, the passengers and the driver may well be involved in that crime together.[3]

Second, within the close confines of the passenger compartment of a car, one person has easy access to a traveling companion's purse, packages, and other containers. See *New York* v. *Belton*, 453 U.S. 454, 460 (1981) (assuming that the entire passenger compartment is within the immediate reach of any occupant). A person may often be able to gain entry to such a container without its owner's knowledge or consent—for example, under the dark of night, while the owner is driving, sleeping, or distracted by other activities, or during rest stops when the owner leaves the container behind in the car.[4] Or the person may gain entry to the

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[3] There is particular reason to suppose that the occupants of a car are involved in a common illegal activity where—as in this case and many cases involving searches under the "automobile exception"—the evidence that provides the probable cause to search the car is within the plain view (or the plain smell) of all occupants. See, *e.g.*, *United States* v. *Crotinger*, 928 F.2d 203 (6th Cir. 1991) (police who had probable cause to search car for narcotics, based, *inter alia*, on pills observed on floor of car and scent of marijuana in passenger compartment, could search passengers' bags). Because "by their very nature [contraband] goods must be withheld from public view," *Ross*, 456 U.S. at 820, when a person does not conceal the contraband from his traveling companions, that may well be because they are also associated with the contraband.

[4] In fact, respondent suggested at trial that the brown bag that was found in her purse, and that contained the syringe with the largest quantity of methamphetamine, could have been placed there by her traveling companions, perhaps while she dozed off in

container with the owner's permission under the guise, for example, of extracting a tissue, a stick of chewing gum, or coins to pay a toll.[5]

An occupant of a car that is in the process of being stopped by the police may also find that a purse of another occupant is an inviting place in which to try to hide contraband. In *County Court of Ulster County* v. *Allen*, 442 U.S. 140 (1979), for example, the police stopped a car in which they observed several firearms in an open handbag near the front passenger seat. That seat was occupied by a 16-year-old girl; the other three occupants of the car were adult men. *Id.* at 143. The Court observed that "it was not unreasonable for [the girl's] counsel to argue and for the jury to infer that when the car was halted for speeding, the other passengers in the car anticipated the risk of a search and attempted to conceal their weapons in a pocketbook in the front seat." *Id.* at 164; see also *Rawlings* v. *Kentucky*, 448 U.S. 98, 102 n.1 (1980) (quoting the trial judge's observation that the "more plausible" explanation for how the drugs at issue came to be found in the purse of the defendant's female companion was that the defendant "saw the officers pull up out front and then

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the car or while she was making a purchase at a convenience store. J.A. 223-224, 232 (respondent's trial testimony); see also J.A. 265 (closing argument of respondent's counsel) ("Did they prove the other syringe [was respondent's]? No, who's in that car? David Young is in that car. Who else is in that car? Vanessa McQueery. Could they have had access to that purse? Yes. Could they have put something in that purse? Yes.").

[5] A passenger's packages and luggage stored in the trunk of a car are likewise accessible to the driver, who has the key to the trunk, and to other passengers, who could gain entry to the trunk on the excuse that they need to store items in, or retrieve items from, their own packages and luggage.

elected to 'push them off' on [his female companion], believing that search was probable, possible, and [i]mminent").

The mere fact that one passenger owns a particular container does not, therefore, justify an assumption that only that passenger's property can be found in the container. The passenger may be a witting or unwitting bailee of illicit goods that the owner hopes will evade detection in a less suspicious place. Even when a passenger is unaware that the driver (or another passenger) has brought narcotics into the car in which they are traveling, the possibility thus remains that the narcotics have been placed among that passenger's belongings. It consequently makes no sense to limit the rule of *Ross*, that the police may search "every part of the vehicle and its contents that may conceal the object" for which they have probable cause to search, 456 U.S. at 825, to only those contents that belong to the driver of the car or to passengers whom the police already have probable cause to arrest. Such an exception could serve only as a blueprint for criminals traveling by car to hide their contraband in the bags of the least suspicious looking passenger.

2. This Court's decisions in the Fourth Amendment area do not offer any support for such a limitation on *Ross*. The Court has previously rejected as "untenable" the suggestion that "property may not be searched unless its occupant is reasonably suspected of crime and is subject to arrest." *Zurcher* v. *Stanford Daily*, 436 U.S. 547, 559 (1978). As the Court recognized, the "critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought." *Id.* at 556.

Similarly, in *Carroll*, the Court explained that in a warrantless search of an automobile based on probable cause, "[t]he right to search and the validity of the seizure are not dependent on the right to arrest," but "are dependent on the reasonable cause the seizing officer has for belief that the contents of the automobile offend against the law." 267 U.S. at 158-159.

The Wyoming Supreme Court did not consider the distinctive characteristics of automobile travel in concluding that the officers' probable cause to search the car for narcotics did not extend to containers that, although capable of concealing the narcotics that were the object of the search, belonged to somebody other than the driver. It instead relied principally on *Ybarra* v. *Illinois*, 444 U.S. 85 (1979), which involved a search of a tavern patron based on a warrant to search the tavern.[6] In *Ybarra*, the Court held that the warrant itself did not authorize a search of the tavern patron, *id.* at 92, and that the patron's mere presence in the tavern, without more, did not give rise to a reasonable belief that the patron was armed and dangerous, as needed to justify a frisk under *Terry* v. *Ohio*, 392 U.S. 1 (1968). *Ybarra*, 444 U.S. at 93-94. The Court also rejected the State's effort to extend *Terry* to "evidence searches of persons" found at the scene of a small place to be searched under a warrant. *Id.* at 94. The Court

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[6] The court also cited various lower court decisions involving searches of visitors to fixed premises. See Pet. App. 8-15. Those cases, which we assume for present purposes to have been correctly decided in their own factual contexts, are inapposite here for the reasons discussed below. In any event, this Court has not resolved that precise issue. See *Michigan* v. *Summers*, 452 U.S. 692, 694-695 (1981) (noting the State's argument that a warrant authorizes a search of persons found at the location to be searched but not resolving the issue).

instead ruled that the probable-cause standard struck the proper balance in cases involving a search of persons for evidence. *Id.* at 95-96.

Ybarra is not applicable here. The search conducted in *Ybarra* was of a customer who was merely found in a public tavern for which a search warrant had been issued. The patron had no apparent connection with the tavern, other than as a customer, and the warrant was not supported by a showing of probable cause that related in any way to customers. For all the facts showed, Ybarra may have been at the premises simply to buy a drink. In contrast, when officers stop a private car, the occupants are all involved in a common enterprise and have had ample opportunity (and, often, incentive) to gain access to one another's belongings in the course of their travel. The probable cause for a search often arises at a time when all occupants are present, thus making it all the more plausible to suspect that the occupants may be involved in joint criminal activity. And even if there is no joint activity, one individual in a vehicle that is about to be stopped may seek to hide contraband in the effects of his companions. Those factors make it reasonable to believe that any contraband within the automobile could be concealed in any occupant's personal effects, even without individualized probable cause attaching to each occupant.[7]

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[7] Even in cases involving warrants to search fixed premises, the federal courts of appeals have recognized that a search of the purse or other personal effects of an individual who is temporarily at the premises may be within the scope of the warrant, although the individual is not an owner, resident, or employee. See, *e.g.*, *United States* v. *Johnson*, 475 F.2d 977, 979 (D.C. Cir. 1973) (warrant to search apartment for narcotics permitted search of visitor's purse, where purse was on table "resting separately from the person of its owner"). Some circuits have held that, so long as

It is true that *Ybarra* relied (444 U.S. at 94-95) on *United States* v. *Di Re*, 332 U.S. 581 (1948), which involved the search of a passenger in an automobile. *Di Re* held that the authority recognized in *Carroll* to conduct a warrantless search of a car did not extend to searching the passengers in the car. 332 U.S. at 587 ("We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled."). The holding of *Di Re* does not assist respondent in this case. This case involves no claim that probable cause to conduct a search of a car justifies a search of all *persons* in the car. Rather, the case involves the submission that, under *Ross*, when officers have probable cause to search containers in a car, their right to search is not limited to containers owned by particular persons. Whatever the force of *Di Re* in limiting searches of

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the person found at a premises is more than a "mere visitor or passerby," a warrant to search the premises permits a search of any of the person's belongings that could contain the object of the search. *United States* v. *Gray*, 814 F.2d 49, 51 (1st Cir. 1987) (warrant to search house for narcotics permitted police to search jacket of non-resident who was found there in early morning hours after drug deal had occurred outside); see *United States* v. *Giwa*, 831 F.2d 538, 544-545 (5th Cir. 1987) (overnight guest); cf. *United States* v. *Young*, 909 F.2d 442 (11th Cir. 1990) (dicta), cert. denied, 502 U.S. 825 (1991). A passenger in a private automobile traveling along the street is not equivalent to a "mere visitor or passerby" because, among other things, he has chosen to engage in a common endeavor with the driver and any other passengers, knowing that he cannot simply walk away whenever he chooses, as could a visitor or passerby from fixed premises. Accordingly, even under the standard applied in those cases involving fixed premises, a warrant to search an automobile, and thus a warrantless search of the automobile based on probable cause, would permit a search of the passenger's belongings.

persons, but see 3 W. R. LaFave, *Search and Seizure* § 7.2(e), at 507-508 (3d ed. 1996) (finding "persuasive" the criticism of the reasoning of *Di Re* in the Model Code of Pre-Arraignment Procedure), it should not be extended to limit the right recognized under *Ross* to conduct a full search of all of the containers in a car that may conceal the object of the search.

B. The Limitation On *Ross* Announced In This Case Would Be Unworkable In Practice

The Wyoming Supreme Court, in order to implement its view of the permissible scope of probable cause searches of automobiles with multiple occupants, announced a set of guidelines to be followed by the police. Under those guidelines, a police officer may search any container that he finds in an automobile, unless he knows or should know that the container belongs to a passenger whom he does not have probable cause to arrest; that rule is subject to an exception, however, that permits a search even of such a container if an "opportunity to conceal the contraband" in the container existed "immediately prior to or during the stop." Pet. App. 16, 18. The practical difficulties that would arise in applying those guidelines, and in reaching fair, consistent, and coherent results, provides further reason not to create an exception to the clear rule of *Ross* applicable to containers owned by automobile passengers.

1. In *Ross*, while not presented with a situation involving an automobile with multiple occupants and thus multiple possible owners of any container, the Court stated a rule that "applies equally to all containers" in an automobile, whether a "paper bag" or a "locked attaché case," regardless of the extent to which the owner manifested an expectation of privacy in their

contents. 456 U.S. at 822. The Court explained that "[w]hen a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand." *Id.* at 821.

The Wyoming Supreme Court's rule, however, would require police officers to draw "nice distinctions" based on the particular characteristics of containers and their possible owners. The court reasoned that the officer in this case knew, or should have known, that respondent's container did not belong to the male driver of the car, simply because the container was a "lady's purse" and "men do not carry purses." Pet. App. 17. Apparently, then, if the driver of the car had been a woman, or a man from a culture in which men do carry purses,[8] the search of the purse in this case would have been permissible. And the search presumably would also have been permissible if respondent had chosen to carry her belongings in a briefcase, a gym bag, or a paper sack instead of a purse.

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[8] The leather "men's carryall," essentially a male purse, is commonly carried by European men, but less commonly by American men. See L. May, *In the Bag*, Atlanta Const., Jan. 15, 1995, at L1; see also W. Brown, *Delta to Count Laptops as Carry-Ons*, Wash. Post, Mar. 4, 1998, at C12 (noting that one U.S. airline has created an exception to its new carry-on baggage rules for "purses," either male or female). Of course, leather or cloth bags resembling purses are part of the traditional male costume of many ethnic groups, ranging from the Scots to the American Indians of the Northeast.

It makes no legal sense for an individual's Fourth Amendment right to be free from a search of his belongings to turn on such considerations. And it makes no practical sense for the police to have to devote time during car stops assessing, at the expense of "the prompt and efficient completion of the task at hand," *Ross*, 456 U.S. at 821, whether a mauve suitcase might reasonably belong to a man or whether a Pittsburgh Steelers duffel might reasonably belong to a woman.[9]

2. The Wyoming Supreme Court's guidelines also fail adequately to address the possibility, discussed above, that one occupant of a car may have secreted the contraband in another occupant's bag, with or without his consent. The court did hold that a passenger's bag may be searched, even without probable cause to believe that the passenger is involved in a crime, if there was an "opportunity" to place contraband in the bag during or "immediately" before the stop. Pet. App. 18. That test is inherently too limited in its scope, however, because the concealment could have occurred earlier. But, even on its own terms, the test requires the police to resolve difficult questions about whether an "opportunity" to conceal contraband existed and, if so, whether it was sufficiently "immediate[]" in the circumstances of a particular traffic stop. The outcome could differ depending on the time of day, the size and

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[9] Nor could the police simply accept the car occupants' own assertions as to which of them owns a particular container. The occupants, if actually engaged in a crime, could not be expected to be truthful about the ownership of a container holding evidence of the crime. In this case, for example, respondent initially told the officer that she did not have any identification with her, perhaps in an attempt to deceive the officer as to her ownership of the purse that she had left behind in the car. J.A. 140-141.

configuration of the car, and the precise positions of the occupants and their property within the car. And the police would often have little assurance, given the fact-specific nature of the inquiry, that a court would reach the same conclusion that they had reached at the time of the traffic stop.

Indeed, the majority and dissent on the Wyoming Supreme Court appear to have reached different conclusions in applying that test to the present case. The majority believed that no such opportunity existed because, once the car had been stopped, the interior of the car was illuminated and the passengers were constantly under the observation of an officer. Pet. App. 18. It was apparently irrelevant that the contraband could, for example, have been transferred to the purse on the highway, had the occupants noticed the officer parked at the side of the road completing a previous traffic stop as they went speeding past. The dissent, in contrast, seemed to believe that the requisite opportunity was present, because "the transfer of small containers of controlled substances between an automobile's occupants can occur swiftly, silently, effortlessly, and without detection by even the keenest observer." *Id.* at 25.

3. In the context of automobile searches, as in other contexts, the Court has recognized "the virtue of providing clear and unequivocal guidelines to the law enforcement profession," *Acevedo*, 500 U.S. at 577 (internal quotation marks omitted), whose members have "only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront," *Belton*, 453 U.S. at 458 (quoting *Dunaway* v. *New York*, 422 U.S. 200, 214 (1979)). The guidelines that the Wyoming Supreme Court articulated in this case have the po-

tential to create great uncertainty among law-enforcement officers as to what containers in an automobile with multiple occupants may be opened and searched.

C. The Application Of *Ross* To All Containers, Regardless Of Ownership, Accords With Related Legal Rules Under The Fourth Amendment

The rule of *Ross* that "[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of *every part of the vehicle and its contents* that may conceal the object of the search," 456 U.S. at 825 (emphasis added), is consistent with the understanding, reflected in this Court's Fourth Amendment jurisprudence, that an individual has a diminished expectation of privacy in his person and effects when he is in an automobile, whether as a driver or a passenger. That is both because an automobile "travels public thoroughfares where both its occupants and its contents are in plain view," and because an automobile is subject to "pervasive regulation by the State" such that its occupants "must expect that the State, in enforcing its regulations, will intrude to some extent upon [their] privacy." *New York* v. *Class*, 475 U.S. 106, 113 (1986).

The application of *Ross* to permit searches of any containers found in a private automobile, regardless of the ownership of the containers, is consistent with those understandings and with the legal rules that have derived from them. The Court has upheld police practices that necessarily intrude on the interests of automobile passengers to be free from searches and seizures, without regard to whether probable cause (or reasonable suspicion) exists to believe that the passengers themselves are involved in any offense. The police may stop a car if they have probable cause to

believe that a traffic violation has occurred, *Whren* v. *United States*, 517 U.S. 806 (1996), or reasonable suspicion that the driver has committed a crime, *United States* v. *Hensley*, 469 U.S. 221 (1985). As a practical matter, when the car is stopped, all of its occupants are detained, the passengers as well as the driver. *Wilson*, 519 U.S. at 413-414. The police may lawfully look inside the stopped car, if necessary using a flashlight to expose the interior of the car and its passengers. *Texas* v. *Brown*, 460 U.S. 730, 739-740 (1983) (plurality opinion). The police also may order the passengers, as well as the driver, to leave the car in order to observe them more carefully. *Wilson*, 519 U.S. at 413-414.

Even more pertinent to this case, when police officers arrest any occupant of the car for a criminal offense, they may search the entire passenger compartment of the car incident to the arrest. *Belton*, 453 U.S. at 460. The Court has not confronted the precise question whether the police, in conducting a search incident to the arrest of one occupant of a car, may search other occupants' belongings that are within the passenger compartment. But an affirmative answer is necessarily implicit in *Belton*, which recognizes that the police should be able to search anywhere "an arrestee might reach in order to grab a weapon or evidentiary ite[m]." *Id.* at 460 (quoting *Chimel* v. *California*, 395 U.S. 752, 763 (1969)). Those locations could reasonably be expected to include another occupant's purse, bag, or jacket pocket.[10]

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[10] A number of lower courts have so held. See *e.g.*, *McMillon*, 892 P.2d at 883; *State* v. *Moore*, 619 So. 2d 376, 377 (Fla. Dist. Ct. App. 1993); *People* v. *Prance*, 226 Cal. App. 3d 1525, 1533 (Ct. App. 1991); see also *United States* v. *Vaughan*, 718 F.2d 332, 334 (9th Cir. 1983) ("if [a passenger] had left the briefcase in the car, ad-

It would be anomalous if the police could, as *Belton* suggests, search a passenger's purse based on probable cause to arrest the driver or another passenger, but could not, as the court below held, search a passenger's purse based on probable cause to believe that the car contains evidence of a crime.[11] The police would then be encouraged to make more arrests of drivers, if only for traffic violations, in order to justify a comprehensive search of all containers in the passenger compartment of the car; in this case, for example, the officers needed only to have arrested the driver of the car, as they presumably could have based on the syringe in his pocket and his admission that he used it to take illegal drugs, in order to have made the search of respondent's purse permissible as a search incident to arrest. The decision below could thus have the curious effect of producing more intrusion on drivers' interest in avoiding seizures, without providing any more protection of passengers' interest in avoiding searches of their belongings in the passenger compartment of the car.

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mittedly it could have been searched" incident to the driver's arrest).

[11] The police could not search the trunk of the car, however, as part of a search incident to arrest, as they could as part of a search based on probable cause.

CONCLUSION

The judgment of the Wyoming Supreme Court should be reversed.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

THE STATE OF WYOMING,

Petitioner,

vs.

SANDRA HOUGHTON,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court for the State of Wyoming

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Does the bright-line of *Acevedo* v. *California* permitting containers to be opened during warrantless automobile searches have limits based on the ownership of the containers?

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IN THE

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OCTOBER TERM, 1998

THE STATE OF WYOMING,

Petitioner,

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SANDRA HOUGHTON,

Respondent.

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the due process protection of the accused into balance with the rights of the victim and of society.

The automobile's mobility and pervasiveness makes it an ideal tool for transporting contraband, particularly illegal drugs. The ability of police to conduct warrantless searches of automobiles whenever they possess probable cause that the vehicle

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1. Rule 37.6 Statement: This brief was written entirely by counsel for *amicus*, as listed on the cover, and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief.

Both parties have given written consent to the filing of this brief.

contains contraband is thus an essential tool for combatting such crime. The Wyoming Supreme Court's "notice test" for opening closed containers suspected of carrying contraband needlessly complicates automobile searches while providing little protection for any legitimate expectation of privacy. The threat posed by this decision to this very important law enforcement mechanism is contrary to the interests CJLF was formed to protect.

SUMMARY OF FACTS AND CASE

On July 23, 1995, in the early morning, a "Wyoming Highway Patrol Officer stopped an automobile for speeding and a faulty break light." *Houghton* v. *State*, 956 P. 2d 363, 365 (Wyo. 1998). The vehicle contained three occupants: the driver, David Young; his girlfriend; and the defendant. *Ibid.* The officer, who was soon joined by two other officers, started questioning Young. During the questioning, the officer noticed a syringe in Young's shirt pocket. The officer then went to his patrol car in order to get gloves. Upon his returning to Young's vehicle, he ordered Young out of the car and to place the syringe on the hood. When asked what the syringe was for, Young replied that it was for personal use. *Ibid.*

The passengers were then ordered out of the vehicle and asked for identification. *Ibid.* Defendant identified herself as Sandra Jones and claimed that she had no identification. The passengers were then patted down, which produced no weapons or drugs. The officer then searched the automobile for drugs. *Ibid.*

The officer discovered "a closed 'cloth lady's purse' " while searching behind the area where the two female passengers sat. *Ibid.* He opened the purse and took out a wallet. Inside the wallet he discovered defendant's driver's license which identified her as Sandra Houghton. Defendant then acknowledged that the purse was hers. The officer then continued the search, finding "a brown 'wallet bag' containing drug parapher-

nalia, a syringe containing an estimated 60 cc's of liquid, a black wallet containing drug paraphernalia, a vial, and a syringe with approximately 10 cc's of liquid." *Ibid.* A field test of the liquid from the syringe in the brown bag tested positive for methamphetamine. Defendant was arrested, while Young and his girlfriend were released. *Ibid.*

The trial court denied defendant's suppression motion, relying on *California* v. *Acevedo*, 500 U. S. 565 (1991). *Houghton*, 956 P. 2d, at 365. A jury convicted defendant of one count of felony possession of a controlled substance. She was sentenced to two to three years in prison. *Ibid.* The Wyoming Supreme Court reversed, holding that the search violated the Fourth Amendment because the officer knew or should have known that the purse did not belong to Young. *Id.*, at 372.

SUMMARY OF ARGUMENT

The decision below failed to appreciate the special status of the automobile under the Fourth Amendment. Beginning with *Carroll* v. *United States*, this Court has treated automobiles differently in its Fourth Amendment cases due to their mobility, the diminished expectations of privacy surrounding automobiles, and the inherent dangers of automobile stops.

The Wyoming Supreme Court's reliance on *Ybarra* v. *Illinois* is a product of its failure to appreciate this key distinction. Occupants of an automobile are more closely associated with the premises being searched and have less of an expectation of privacy than the tavern patrons in *Ybarra*. As both automobiles and their passengers are treated differently under the Fourth Amendment, *Ybarra* is inapplicable.

The automobile exception to the warrant requirement is a creature of Fourth Amendment policy. In addition to the mobility and diminished privacy of the automobile, another consideration should influence this Court's analysis of automobile searches. Because the automobile exception is limited to searches for contraband, and since most contraband searches are

for illegal drugs, most searches under this exception will be for drugs. Therefore, the dangers often associated with such searches should inform this Court's analysis of the automobile exception where relevant.

The present case is best served by the formulation of a single, clear-cut rule by this Court. Although this Court has shied away from bright lines upon occasion, it has done so where the rule would be impractical or provide little benefit. This Court can and has established bright-lines where there is a need for clear authority in a carefully defined aspect of Fourth Amendment law. This Court's cases demonstrate that automotive searches are ideally suited to such rules.

The "notice test" invoked by the Wyoming Supreme Court fails to satisfy this requirement. Tying the authority to open a container to the apparent ownership of it needlessly complicates automobile searches, while providing a potential windfall for perpetrators. Any attempt to deal with concealed contraband under this test will either create an exception that will swallow the test or create an exceptionally complicated rule.

The better rule is derived from *Acevedo*. Allowing all containers to be opened, regardless of their ownership, is clear, simple, and consistent with the spirit of *Acevedo*. So long as a container is capable of holding the suspected contraband, officers should be able to open it during an automobile search.

ARGUMENT

I. The decision below did not account for the exigencies of automobile searches.

The automobile occupies an important niche in Fourth Amendment law. Driving or riding in an automobile significantly changes an individual's legitimate expectation of privacy. The Fourth Amendment does not, of course, disappear inside the car. See *Coolidge* v. *New Hampshire*, 403 U. S. 443, 461-462 (1971) (plurality). It is no less true, however, that one's

expectation of privacy diminishes upon entering an automobile. The reasons for treating automobile searches differently form the foundation for any analysis of a search or seizure involving an automobile. The Wyoming Supreme Court's failure to appreciate this difference taints its analysis.

The first case from this Court to uphold a warrantless search of an automobile, *Carroll* v. *United States*, 267 U. S. 132 (1925), centered on the difficulty of searching an automobile or other vehicles under the traditional warrant process.

> "[T]he guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Id.*, at 153.

As the automobile exception was expanded and refined, another justification developed, namely, the lesser expectation of privacy associated with automobiles.

> "The Court has recognized that the physical characteristics of an automobile and its use result in a lessened expectation of privacy therein:
>
> " 'One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view.' " *New York* v. *Class*, 475 U. S. 106, 112-113 (1986) (quoting *Cardwell* v. *Lewis*, 417 U. S. 583, 590 (1974) (plurality)).

The diminished sense of privacy inherent in automobiles is reinforced by the "pervasive and continuing governmental regulation" of them. See *South Dakota* v. *Opperman*, 428 U. S. 364, 368 (1976).

The limited privacy of the automobile has consequences beyond warrantless searches. In *United States* v. *Knotts*, 460 U. S. 276 (1983), federal agents placed a beeper inside a container of chloroform to be sold to an individual suspected of using stolen chemicals to manufacture illicit drugs. See *id.*, at 277-278. Relying on a signal from the beeper, agents traced the chloroform on its journey to its final resting point, a cabin in Wisconsin. *Id.*, at 278. Using the location of the chloroform and additional information obtained through visual surveillance, officers obtained and executed a search warrant. *Id.*, at 279. The Eighth Circuit Court of Appeals reversed the conviction, holding that the monitoring of the beeper violated defendant's reasonable expectation of privacy, suppressing all information found after the cabin was located as being the fruit of the illegal monitoring. *Ibid.* This Court noted that it had "commented more than once on the diminished expectation of privacy in an automobile." *Id.*, at 281. The situation in *Knotts* was no different since "[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." *Ibid.* The surveillance did not constitute a search or seizure, and therefore could not violate the Fourth Amendment. See *id.*, at 285.

The exigencies surrounding the automobile extend beyond the Warrant Clause as well. In *Maryland* v. *Wilson*, 519 U. S. 408, 410 (1997), this Court extended the rule of *Pennsylvania* v. *Mimms*, 434 U. S. 106 (1977) (*per curiam*) (ordering the driver to exit the vehicle during a lawful stop) to automobile passengers. Since traffic stops pose a real threat of danger to officers, see *Wilson*, 519 U. S., at 413, the balance of interest tipped in favor of the reasonableness of ordering passengers out of vehicles during traffic stops. Even though the passenger did nothing to justify the initial stop, the "danger to an officer from

a traffic stop," *id.*, at 414, from the presence of passengers, justified this additional intrusion. *Id.*, at 415.

Wilson drew from the rule of *Michigan* v. *Summers*, 452 U. S. 692 (1981), which allowed police officers to detain occupants during the execution of a search warrant for contraband on a residence. See *id.*, at 704-705. While *Summers* gave officers substantial authority, the grant of authority to detain was carefully controlled. The existence of a warrant was "[o]f prime importance" in supporting the constitutionality of the detention. See *id.*, at 701. Furthermore, *Summers* was applied only to searches for illegal drugs because of the special risk such searches carried. "[T]he execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence." *Id.*, at 702. Allowing officers to control the search through temporary detention minimizes this risk. *Id.*, at 702-703.

Wilson extended *Summers*' limited rule by recognizing the automobile's special place in the Fourth Amendment. Instead of a magistrate's finding of probable cause of the existence of contraband, the *Wilson* detention can be supported by a simple warrantless traffic stop. See *Wilson*, *supra*, 519 U. S., at 415. The lack of a warrant is inevitable when a traveling automobile is involved; it is impractical to obtain a warrant on a moving vehicle. See *Carroll*, *supra*, 267 U. S., at 153. As noted earlier, the inherent danger of automobile stops played a major role in the *Wilson* decision, thus making the automotive stop analogous to executing a search warrant for narcotics. See 519 U. S., at 414 (analogizing *Summers*). Finally, the realities of automobile stops lessens the intrusiveness of the detention. Because "as a practical matter, the passengers are already stopped by virtue of the stop of the vehicle," *id.*, at 413-414, the extra intrusion of ordering them out of the car is minimal. *Id.*, at 415. Even though the passengers did not commit the "minor vehicular offense," which justified the stop and detention, the realities of the possible dangers at a traffic stop help justify the extra intrusion. See *id.*, at 413-414.

Summers created a special exemption for certain search warrants. Although it took no formal position on whether its rule applied to ordinary searches for evidence, see 452 U. S., at 705, n. 20, a careful reading of that footnote casts substantial doubt over any attempt to expand *Summers* beyond warrants for contraband. Footnote 20's disclaimer concerning evidentiary searches is followed by a citation to Justice Steven's dissent in *Zurcher* v. *Stanford Daily*, 436 U. S. 547 (1978), where he stated "the persons who possess evidence that may help to identify an offender, or explain an aspect of a criminal transaction, far outnumber those who have custody of weapons or plunder," and that "[c]ountless law-abiding citizens . . . may have documents in their possession that relate to an ongoing criminal investigation." *Id.*, at 579. If accepted, this view casts grave doubt over extending *Summers* beyond contraband. See 2 W. LaFave, Search and Seizure § 4.9(e), pp. 651-652, n. 123 (3d ed. 1996). By contrast *Wilson* applies to *all* passengers in *all* validly stopped automobiles, vividly illustrating the differences between automobile searches and most other searches. As this Court has noted, "for the purposes of the Fourth Amendment there is a *constitutional difference* between houses and cars." *Chambers* v. *Maroney*, 399 U. S. 42, 52 (1970) (emphasis added).

The Wyoming Supreme Court's decision did not appreciate this essential distinction. Relying on the statement in *United States* v. *Ross*, 456 U. S. 798, 823 (1982), equating the scope of a warrantless automobile search with that of a search pursuant to a warrant,[2] see *Houghton* v. *State*, 956 P. 2d 363, 366 (Wyo. 1998), the Wyoming high court analyzes the search in the present case as if it were the product of an ordinary search warrant. See *id.*, at 367.

This problem with approach is revealed by its reliance on *Ybarra* v. *Illinois*, 444 U. S. 85 (1979). *Ybarra* struck down a

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2. "The scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause." *Ibid.*

patdown search of a customer who was in a bar during the execution of a search warrant for drugs against the premises of the tavern and the person of a bartender. See *id.*, at 88, 96. In reaching that conclusion, this Court noted that probable cause must extend to each individual being searched or seized pursuant to the warrant, as the mere coincidence of visiting a place during the execution of a search warrant against it did not justify an invasion of the visitor's privacy. See *id.*, at 91. The Wyoming Supreme Court extended this "persons not places" reasoning, *ibid.*, to protect containers in automobiles such as the defendant's purse. See *Houghton*, *supra*, 956 P. 2d, at 367-369.

This conclusion fails to place *Ybarra* in its proper context. *Ybarra* protected visitors to a public place, and is therefore distinguishable from *Summers*, which dealt with a private dwelling. See 2 LaFave, *supra*, at 650-651. *Wilson* demonstrates that the passengers of an automobile are analogous to the occupants in *Summers* under the Fourth Amendment. One does not normally share an automobile with complete strangers, as one often does with a public place like a bar. Furthermore, the occupants of a vehicle have a diminished privacy expectation compared to *Ybarra*'s bar patrons. The difference is more pronounced when comparing the containers in the present case to the *Ybarra* patrons. " 'The search of an automobile is far less intrusive on the rights protected by the Fourth Amendment than the search of one's person or of a building.' " *Cardwell* v. *Lewis*, 417 U. S. 583, 590 (1974) (plurality) (quoting *Almeida-Sanchez* v. *United States*, 413 U. S. 266, 279 (1973) (Powell, J., concurring)). *Ybarra*'s protection of the stranger does not apply to the context of the automobile search.

The fact that the Wyoming Supreme Court invoked *Ross*, an automobile case, to support its use of *Ybarra* does not bring *Ybarra* into the context of automobile searches. In *Ross*, officers stopped defendant's car after an informant had provided them with probable cause that Ross was dealing drugs from his car. See 456 U. S., at 800-801. A search of the passenger compartment found a bullet on the front seat, and a gun in the glove compartment. *Id.*, at 801. The police then searched

Ross' trunk where they found a closed paper bag which they opened, finding glassine bags of what proved to be heroin. *Ibid.* A more thorough search at the police station found in the trunk a zippered leather pouch containing $3,200 in cash. *Ibid.* Citing *Arkansas* v. *Sanders*, 442 U. S. 753 (1979), the Ninth Circuit Court of Appeals struck down the opening of the leather pouch because Ross had a reasonable expectation of privacy in its contents. See *Ross*, 456 U. S., at 801-802.

Sanders was based on *United States* v. *Chadwick*, 433 U. S. 1 (1977). See 442 U. S., at 762-763. In *Chadwick*, federal agents had probable cause to believe that a 200-pound, double-locked footlocker contained marijuana. 433 U. S., at 3-5. The agents tracked the locker as defendants removed it from a train and carried it through the station to a waiting automobile. *Id.*, at 3-4. As defendants lifted the locker to the car, the agents arrested them, seized the locker, and opened it one and one-half hours later. See *id.*, at 4. The United States did not claim that the trunk's brief contact with the car made *Carroll* applicable. It instead analogized the movable luggage to an automobile. *Id.*, at 12. The *Chadwick* Court rejected this argument, finding that a person expects more privacy in his luggage and personal effects than in his car. *Id.*, at 13. *Sanders* extended *Chadwick* to a suitcase stored in the trunk of a vehicle. See *Sanders*, *supra*, 442 U. S., at 762-765.

These cases provided a confusing, ill-considered standard that impeded effective law enforcement while doing little to protect privacy, and eventually would be abandoned for automobiles. See *post*, at 11. The *Ross* Court avoided the *Chadwick-Sanders* rule by distinguishing between it and the original automobile search case, *Carroll*. See 456 U. S., at 817. When it equated the scope of the automobile search with that of a warrant-based search, the *Ross* Court was distinguishing the *Chadwick-Sanders* rule so that officers could open containers found during the search under the authority of *Carroll*.

> "The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which

> the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. Probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab." *Ross*, *supra*, 456 U. S., at 824.

This is the only limit that *Ross* adds to automobile searches. *Ross* did not import all of the law of search warrants into the automobile search. Where appropriate to the context of the automobile search, principles could be borrowed from this Court's interpretation of the Warrant Clause. As *California* v. *Acevedo*, 500 U. S. 565 (1991) demonstrates, where the automobile demanded different treatment, automobile searches would still be treated differently.

Acevedo's car was stopped on probable cause that it contained drugs. See *Id.*, at 567. A search of the trunk found a paper bag which, when opened without a warrant, was found to contain marijuana. *Ibid.* A California Court of Appeal suppressed the search of the bag under *Chadwick* while noting tension between that decision and *Ross*. *Id.*, at 568. This Court found that the *Chadwick-Sanders* line provided little protection of privacy, see *id.*, at 575-576, and established a confusing standard. See *id.*, at 576-577. The *Chadwick-Sanders* line was abandoned for automobile searches because automobiles were different under the Fourth Amendment.

> "Thus, this Court in *Ross* took the critical step of saying that closed containers in cars could be searched without a warrant *because of their presence within the automobile*. Despite the protection that *Sanders* purported to extend to closed containers, the privacy interest in those closed

containers *yielded to the broad scope of an automobile search.*" *Id.*, at 572 (emphasis added).

Attempts to apply stricter, non-automobile standards to automobile searches are usually fruitless. In *Acevedo*, the dissent supported its argument that *Chadwick-Sanders* had not impeded law enforcement by noting that since *Ross*, this Court had decided 27 cases in favor of the government. See *id.*, at 600 (Stevens, J., dissenting). The *Acevedo* majority dismissed this with a forceful argument against applying alien concepts to automotive searches.

> "Most important, with the exception of *United States* v. *Johns*, 469 U. S. 478 (1985) and *Texas* v. *Brown*, 460 U. S. 730 (1983), the Fourth Amendment cases cited by the dissent do not concern automobiles or the automobile exception. From *Carroll* and *Ross*, this Court has explained that *automobile searches differ from other searches*. The dissent fails to acknowledge this basic principle and so misconstrues and misapplies our Fourth Amendment case law." *Id.*, at 578 (emphasis added).

Accepting the Wyoming Supreme Court's rule would amount to jamming *Ybarra*'s square peg into the round hole of automobile searches.

Ybarra's reliance on *United States* v. *Di Re*, 332 U. S. 581 (1948), see 444 U. S., at 94-95, does not justify applying *Ybarra* to automobile searches. In *Di Re* an informer told an Office of the Price Administration investigator that he was going to purchase counterfeit gasoline ration coupons from a person named Buttitta in a certain place in Buffalo, New York. The investigator and a Buffalo police detective trailed Buttitta's car until it parked at the appointed place. They went to the car and found the informer in the rear seat holding two coupons which were later found to be counterfeit. The informant stated that he obtained the coupons from Buttitta who was sitting in front along with Di Re. All three were taken into custody, frisked for weapons, and taken to the station. At the station, two searches of Di Re turned up numerous counterfeit gas and oil coupons.

See 332 U. S., at 583. This Court struck down the search, finding that probable cause to search a car does not support the search of an occupant of that car absent probable cause to arrest him. See *id.*, at 586-587.

Di Re was invoked by the *Ybarra* Court to reject an argument that had little to do with the present case. Illinois had argued that *Terry* v. *Ohio*, 392 U. S. 1 (1968) should be extended to the execution of drug warrants against " 'compact' premises." See *Ybarra, supra*, 444 U. S., at 94. *Di Re* itself does not govern the present case because it only prevented searches of the occupants themselves; *Di Re* did not address searches of containers. This Court was only "not convinced that a person, by mere presence in a suspected car, loses immunities from search of his *person* to which he would otherwise be entitled." *Di Re, supra*, 332 U. S., at 587 (emphasis added). Both *Ross* and *Acevedo* demonstrate that as far as containers are concerned, their presence in an automobile diminishes the expectation of privacy in them. *Di Re* has been criticized for allowing occupants of an automobile to " 'take the narcotics out of the glove compartment and stuff them in their pockets, and drive happily away after the vehicle has been fruitlessly searched.' " 3 W. LaFave, Search and Seizure § 7.2(e), p. 508 (3d ed. 1996) (quoting Model Code of Pre-Arraignment Procedure 552 (1975)). It should not be allowed to create a new windfall with respect to containers in vehicles.

The legality of the search in the present case can only be decided on its own terms, as an automobile search. The Wyoming Supreme Court's reliance on *Ybarra* was misplaced, thus confusing the analysis and leading it to reach the wrong result.

II. The rule of *California* v. *Acevedo* should not be complicated by the impractical "notice test."

A. The Policy Problem.

The automobile exception to the warrant requirement based upon *Carroll* v. *United States*, 267 U. S. 132 (1925) and its successors is a creature of Fourth Amendment policy. The automobile exception and its subsequent application by the Court have involved a careful analysis of the competing interests of the individual's privacy and the public interest in effective law enforcement. See, *e.g.*, *id.*, at 153-154; *Cady* v. *Dombrowski*, 413 U. S. 433, 441-442 (1973); *South Dakota* v. *Opperman*, 428 U. S. 364, 367-369 (1976); *California* v. *Carney*, 471 U. S. 386, 394 (1985); *California* v. *Acevedo*, 500 U. S. 565, 576-577 (1991).

The automobile exception to the warrant requirement is justified on the policy grounds that it is impractical to obtain a warrant to search something as mobile as an automobile, and that cars carry a diminished expectation of privacy. See *Carney*, *supra*, 471 U. S., at 391; *supra*, at 5-6. As noted in part I, *supra*, these are not the only reasons for treating automobiles differently under the Fourth Amendment. See *supra*, at 6-8. *Amicus* submits that an automobile search should be analyzed under all of the relevant policy reasons that make automobiles special under the Fourth Amendment. Thus, an additional aspect of automobile searches, the risks associated with searches for drugs, deserves particular attention when considering what standards should govern the conduct of automobile searches.

While important for traffic stops generally, the need to think clearly and control the situation is even more important for a traffic stop that escalates to a warrantless search under the automobile exception. So far this Court has only allowed these types of searches when there is probable cause that the vehicle contains contraband. See, *e.g.*, *Pennsylvania* v. *Labron*, 518

U. S. 938, 940 (1996) (*per curiam*).[3] The extra dangers associated with the typical contraband search reinforces the officer's need for clear instructions from this Court.

Although the term "contraband" covers any goods which are deemed "unlawful to produce or possess," see Black's Law Dictionary 322 (6th ed. 1990), automobile searches will most often involve illegal drugs. The threat posed to society by drugs is considerable. "Possession, use, and distribution of illegal drugs represent 'one of the greatest problems affecting the health and welfare of our population.' " *Harmelin* v. *Michigan*, 501 U. S. 957, 1002 (1991) (Kennedy, J., concurring) (quoting *Treasury Employees* v. *Von Raab*, 489 U. S. 656, 668 (1989)). Given the threat posed from the pervasive scourge of illegal drugs, much effort is expended by law enforcement to combat this threat. Preliminary statistics show that drug offenses constituted 36.4% of all felony convictions in U. S. District Courts in 1994 and 22.9% of all state felony convictions in 1994. See U. S. Dept. of Justice, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics 1996, pp. 440, 471 (1997). A problem this pervasive stands to be a very common target of automobile searches. Thus the bulk of this Court's recent automobile search cases have involved drug searches or seizures. See, *e.g.*, *Labron*, 518 U. S., at 939 (*per curiam*); *Acevedo*, 500 U. S., at 567; *United States* v. *Johns*, 469 U. S. 478, 480-481 (1985); *Carney*, 471 U. S., at 388; *United States* v. *Ross*, 456 U. S. 798, 800-801 (1982); *Arkansas* v. *Sanders*, 442 U. S. 753, 755 (1979); *Opperman*, 428 U. S., at 365-366.

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3. The contraband requirement started in *Carroll*, which addressed a prohibition-era search for alcohol. See 267 U. S., at 153-154. Although there are sound reasons for having particular concerns about contraband, the impracticality of obtaining a warrant would be similar for other items in an automobile such as a murder weapon. Since this case involves a search for contraband it is unnecessary to determine whether the automobile exception applies to searches supported by probable cause that other evidence of a crime is in the vehicle. However, *Carroll*'s contraband limitation should not be controlling if such a case ever comes before this Court. See 3 W. LaFave, Search and Seizure § 7.2(a), pp. 459-460 (3d ed. 1996).

While some searches will turn up items associated with more mundane crimes, see *Texas* v. *White*, 423 U. S. 67, 67-68 (1975) (*per curiam*) (fraudulent checks), other dangerous items can be found during automobile searches. See, *e.g.*, *Chambers* v. *Maroney*, 399 U. S. 42, 44 (1970) (instruments and fruits of armed robbery, namely guns and money).

Like automobiles, drugs do sometimes change the calculation of what is reasonable under the Fourth Amendment. In upholding the authority of policy to detain an individual leaving a house during the execution of a search warrant for drugs, this Court said:

> "Although no special danger is suggested by the evidence in this record, the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence. The risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation." *Michigan* v. *Summers*, 452 U. S. 692, 702-703 (1981).

The need for clarity is made even stronger by a real threat of lost evidence. The mobility that justifies suspending the warrant requirement greatly aids in the destruction of successfully hidden contraband; if an officer fails to open a container out of fear derived from an unclear understanding of the Fourth Amendment law,[4] then the lucky perpetrators can easily dispose of the potentially incriminating contraband far away from the suspecting police. "In short, '[a] single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.' "

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4. Since automobile searches are warrantless, "police officers of course lose the protection that a warrant would provide to them in an action for damages brought by an individual claiming that the search was unconstitutional." *United States* v. *Ross*, 456 U. S. 798, 823, n. 32 (1982). Fear of litigation can thus make the threat of deterred searches all too real.

New York v. *Belton*, 453 U. S. 454, 458 (1981) (quoting *Dunaway* v. *New York*, 442 U. S. 200, 213-214 (1979)).

B. The Solution.

1. Drawing the proper line.

The Fourth Amendment is a particularly fruitful source of interpretive problems. Any legal standard that turns on a concept as liquid as "reasonableness," see, *e.g.*, *Terry* v. *Ohio*, 392 U. S. 1, 19 (1968); *Whren* v. *United States*, 517 U. S. 806, 817 (1996), is bound to create a complex body of rules. Since the Fourth Amendment regulates much police conduct, see *Belton*, *supra*, 453 U. S., at 458, its scope is necessarily broad, multiplying its many judicial interpretations. Implementing such an important complex legal standard will never be easy.

One of the more difficult problems posed by the Fourth Amendment's interpretative difficulties is determining the proper level of specificity for Fourth Amendment rules. The reasonableness standard at the heart of every Fourth Amendment case often argues for a case-by-case approach so that the factual peculiarities of each case may be appreciated. See, *e.g.*, *Ohio* v. *Robinette*, 519 U. S. 33, 39 (1996); *Florida* v. *Royer*, 460 U. S. 491, 506-507 (1983) (plurality). This Court has, however, also understood that some cases call for clear rules that will govern a variety of situations.

> "Respondent argues that, because we have generally eschewed bright-line rules in the Fourth Amendment context, see, *e.g.*, *Ohio* v. *Robinette*, [519 U. S. 33 (1996)], we should not here conclude that passengers may constitutionally be ordered out of lawfully stopped vehicles. But, that we typically avoid *per se* rules concerning searches and seizures does not mean that we have always done so; [*Pennsylvania* v. *Mimms*, 434 U. S. 106 (1977)] itself drew a bright line, and we believe the principles that underlay that decision apply to passengers as well." *Maryland* v. *Wilson*, 519 U. S. 408, 413, n. 1 (1997).

This dilemma is not solved by throwing the labels "case-by-case approach" or "bright-line rules" at particular Fourth Amendment issues, but by a careful analysis of what level of specificity will best solve the Fourth Amendment problem brought before the Court. This Court will promulgate clear rules to govern Fourth Amendment question when there is a need to simplify.

> "Yet, as one commentator has pointed out, the protection of the Fourth and Fourteenth Amendments 'can only be realized if the police are acting under a set of rules which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement.' LaFave, 'Case-By-Case Adjudication' versus 'Standardized Procedures': The Robinson Dilemma, 1974 S. Ct. Rev. 127, 142. This is because
>
> > " 'Fourth Amendment doctrine, given force and effect by the exclusionary rule, is primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged. A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be "literally impossible of application by the officer in the field." ' " *Id.* at 141." *Belton, supra*, 453 U. S., at 458.

The proposed rule rejected by the *Robinette* Court was the near-antithesis of a proper Fourth Amendment rule. *Robinette* dealt with a consent search conducted after a valid traffic stop. See 519 U. S., at 35-36. The Ohio Supreme Court struck down the search by establishing

> "a bright-line prerequisite for consensual interrogation under these circumstances:

> " 'The right, guaranteed by the federal and Ohio Constitutions, to be secure in one's person and property requires that citizens stopped for traffic offenses be clearly informed by the detaining officer when they are free to go after a valid detention, before an officer attempts to engage in a consensual interrogation. Any attempt at consensual interrogation must be preceded by the phrase "At this time you legally are free to go" or by words of similar import.' " *Id.* at 36.

The impracticality of this standard virtually forced its rejection. This Court had earlier rejected the argument that consent to search was invalid unless the defendant understood his right to decline consent. *Schneckloth* v. *Bustamonte*, 412 U. S. 218, 227 (1973). *Robinette* understood the practicality of that decision. "And just as it 'would be thoroughly impractical to impose on the normal consent search the detailed requirement of an effective warning,' *id.*, at 231, so too would it be unrealistic to police officers to always inform detainees that they are free to go before a consent to search may be deemed voluntary." *Robinette*, *supra*, 519 U. S., at 39-40 (citation omitted) (quoting *Schneckloth*, 412 U. S., at 231).

The rule struck down by *Robinette* did not make an officer's task simpler. Since it was only a prerequisite to a valid consent, satisfying the proposed rule would not end the inquiry. Instead, a court would still have to determine the voluntariness of the consent " 'from all the circumstances . . . .' " *Id.*, at 40 (quoting *Schneckloth*, 412 U. S., at 248-249). This rule thus only served to further complicate the officer's job, contrary to the purpose behind such rules. Since officers will not ask for consent in a uniform manner, and citizens will not respond with any greater consistency, a fact-specific inquiry is the only reasonable solution.

Richards v. *Wisconsin*, 520 U. S. 385 (1997) provides another example of an inappropriate Fourth Amendment rule. The Wisconsin Supreme Court's decision to suspend the "knock-and-announce" rule for the execution of all drug-related

search warrants created an exception that was both too broad and too difficult to contain. See *id.*, at 392-394. This was due in part to the control the police had over the execution of a search warrant. Officers could at times substantially reduce the physical risk or the risk of the destruction of evidence through proper timing or investigation. See *id.*, at 393. This differs from automobile searches, in which police have little control over when and where the search takes place, and where destruction of evidence poses a constant threat. The *Richards* Court's second reason for dismissing the rule, that "the reasons for creating an exception in one category can, relatively easily, be applied to others," see *id.*, at 393-394, does not apply to the present case. Automobiles are clearly treated distinctly under the Fourth Amendment. See Part I, *supra*. *Acevedo* demonstrates that containers within them are also to be treated specially. See *supra*, at 11-12. This different treatment has not and will not bleed into other similar categories. Under the Fourth Amendment, the vehicle stands alone. The rule of *Richards* is thus inapplicable to the present case.

Automobile stops and searches provide several examples of appropriate Fourth Amendment rulemaking. Two of these examples, *Belton*, *supra*, and *Wilson*, *supra*, have already been discussed in this brief. *Belton* dealt with a search incident to a lawful custodial arrest of an occupant of a vehicle. 453 U. S., at 455. Searches incident to custodial arrests were particularly important because of the need to find any weapons the arrestee may have access to, and to prevent the destruction of evidence. *Id.*, at 457. It was therefore important to this Court to formulate a "workable rule" to govern this situation. See *id.*, at 460. From this followed the rule that all containers in the passenger compartment may be searched pursuant to a valid arrest. *Ibid.*

As noted earlier, *Wilson* was based on the inherent danger of vehicle stops. See *supra*, at 6-7. The *Wilson* Court thus understood that officers must be allowed to control the situation. See 519 U. S., at 414. Extending the bright line of *Mimms*, *supra*, see *id.*, at 413, n. 1, allowed officers to preserve that control by freeing them from having to make unnecessarily

complex legal calculations concerning their control over the passengers.

A particularly important rule for the present case was announced in *California* v. *Acevedo*, 500 U. S. 565 (1991). *Acevedo* abandoned the *Chadwick-Sanders* line of cases for a rule generally allowing containers to be searched inside a car under the automobile exception to the Warrant Clause. See *supra*, at 11. A major problem with the *Chadwick-Sanders* rule was its conflict with the *Carroll* doctrine governing automobile searches. See *Acevedo*, 500 U. S., at 576. This "discrepancy between the two rules has led to confusion for law enforcement officers." *Ibid.* *Acevedo* recognized "the virtue of providing ' " 'clear and unequivocal' guidelines . . . . " ' " *Id.*, at 577 (quoting *Minnick* v. *Mississippi*, 498 U. S. 146, 151 (1990) (quoting *Arizona* v. *Roberson*, 486 U. S. 675, 682 (1988))). When confronted by the confusion wrought by *Chadwick* and *Sanders*, the *Acevedo* Court "conclude[d] that it is better to adopt one clear cut rule to govern automobile searches . . . ." *Id.*, at 579. *Carroll* searches of containers within automobiles thus are already governed by a bright-line rule. Any rule that governs the present case should preserve *Acevedo*'s essential clarity.

2. The Rule.

Before finding the right rule to govern the present case, it is important to understand why the Wyoming Supreme Court's standard is inappropriate. It adopted a notice test which prohibits officers from searching any containers they know or reasonably should know "belong to someone not contemplated in the warrant or amenable to search on the basis of probable cause." *Houghton* v. *State*, 956 P. 2d 363, 370 (Wyo. 1998). This test is designed to govern the execution of search warrants of premises, where it is one of several competing standards. See *id.*, at 367; 2 W. LaFave, Search and Seizure § 4.10(b), pp. 661-666 (3d ed. 1996).

The notice test's first fault lies with its origin in *Ybarra* v. *Illinois*, 444 U. S. 85 (1979). Because *Ybarra* only partially limited the government's ability to search visitors to a premises upon which a warrant is being executed, some test had to determine when a visitor's belongings could be searched. See *Houghton*, *supra*, 956 P. 2d, at 367. The notice test attempts to solve this problem.

As noted earlier, *Ybarra* does not govern automobile searches under the *Carroll* exception because the expectation of privacy of an occupant of a vehicle is less than that of *Ybarra*'s visitor to a tavern, and the relationship between the occupants and the vehicle is much closer than that of the visitor to the tavern. See *supra*, at 9. Because automobiles are different for the purpose of the Fourth Amendment, *Ybarra* does not apply, see *supra*, at 9, depriving the notice test of its constitutional authority.

The notice test is also impractical to apply to automobile searches. Requiring an officer searching a vehicle to determine who owns what container is an unnecessarily difficult decision to make, thus risking a potential windfall for perpetrators. The problem with tying authority to search a container to the identity of the owner was explained by the Pennsylvania Supreme Court:

> "[I]t would be ineffective and unworkable to require police officers to make the distinction between which articles of clothing and personal property belong to the resident and which belong to the visitor before beginning the search. It would not be reasonable to require police officers executing a warrant to ask individuals located on the premises whether they own various items of personal property nor would it be reasonable to expect an appropriate response were they required to do so.[5]

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5. The facts of the present case illustrate this point. Defendant falsely denied having ID, when her ID was, in fact, in the purse now in question. See *supra*, at 2.

> "[V]isitors to the premises could frustrate the efforts of police by placing contraband among their unworn personal effects or by announcing ownership of various articles of clothing and containers in order to place those items beyond the scope of the warrant. We cannot sanction any rule that through fraud and gamesmanship erects barriers to the effective and legitimate execution of search warrants." *Commonwealth* v. *Reese*, 549 A. 2d 909, 911 (Pa. 1998).

The fact that the ownership of the container in the present case may be relatively easy to determine does not justify a rule capable of so much harm. The fact that the state did not dispute defendant's ownership of the contents of the purse in the present case, see *Houghton*, *supra*, 956 P. 2d, at 370-371, does not mean that a male suspect will never hide contraband in a woman's purse. The notice test tries to deal with this by allowing a container known or reasonably suspected of belonging to a visitor to be opened if there was "the opportunity to conceal the contraband within the personal effects of the visitor immediately prior to the execution of the warrant." *Id.*, at 370. This will not be practical for automobile searches. Anytime the officer could not see an appreciable part of the passenger compartment for some time between the stop and the search, there will be an opportunity to hide contraband in a purse or some similar container. Since the vast majority of vehicle searches are likely to satisfy this condition, the notice test may be easily avoided. Requirements that add little to personal privacy do not warrant Fourth Amendment protection. See *Acevedo*, *supra*, 500 U. S., at 576. The Wyoming Supreme Court's test would only further complicate the rule at the risk of greatly aiding the concealment of contraband. While such complexity may be acceptable during the relatively formal and set-piece execution of a search warrant, the much more fluid *Carroll* search requires a more straightforward rule.

The proper rule is derived from *Acevedo*. This Court stated that: "The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained." *Id.*, at 580. It is no more than a

small step to recognize that such probable cause supports searches into any container within the automobile that could contain the contraband. The diminished sense of privacy associated with the automobile, see *supra*, at 5, the relationship between the occupants of a vehicle, see *supra*, at 7-8, and the relative ease of concealment during an automotive stop provide strong support for this Court to take that step. The simplicity of this rule and its obvious ease of administration satisfies the needs of automotive searches, making a compelling case for this rule.

Acevedo drew its rule from *Ross*. See 500 U. S., at 580. When the *Ross* Court tied the authority to search containers to probable cause, it was only concerned with whether the container could reasonably be suspected of holding the contraband. See *supra*, at 10-11. There is no inconsistency between the spirit of *Ross* and a rule rendering ownership irrelevant. *Acevedo* meant to provide officers conducting automobile searches with "one clear-cut rule . . . ." 500 U. S., at 579. Rejecting any ownership-based limits to *Acevedo* preserves its integrity.

CONCLUSION

The decision of the Wyoming Supreme Court should be reversed.

November, 1998

Respectfully submitted,

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In The
Supreme Court Of The United States
October Term, 1998

THE STATE OF WYOMING,
Petitioner,

v.

SANDRA HOUGHTON
Respondent.

On Petition for a Writ of Certiorari to the
Wyoming Supreme Court

BRIEF *AMICUS CURIAE* IN SUPPORT OF RESPONDENT SANDRA HOUGHTON

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QUESTION PRESENTED FOR REVIEW

I. Should the decision of the Wyoming Supreme Court in *Houghton v. State*, 956 P.2d 363 (Wyo. 1998), be left undisturbed because, according to the criteria established in *Michigan v. Long*, 463 U.S. 1032 (1983), the judgment rests on adequate and independent state grounds?

II. Does the Fourth Amendment protect a passenger in a vehicle from searches of her belongings where the police officer lacks independent suspicion of that passenger or independent probable cause to believe her belongings contain evidence of a crime?

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2. The Wyoming Supreme Court did not feel "'compelled'" by federal constitutional considerations to "'construe its own law in the manner it did.'" *Michigan v. Long,* 463 U.S. 1032, 1044 (1983)(quoting *Zacchini v. Scripps-Howard Braoadcasting Co.*, 433 U.S. 562, 568 (1977)). 7

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B. If the Court asserts jurisdiction over this case, it should affirm the judgment of the Wyoming Supreme Court. 10

1. The Fourth Amendment protects a passenger in a vehicle from searches of her belongings where the police

officer lacks independent suspicion of that passenger or independent probable cause to believe her belongings contain evidence of a crime. 10

2. This Court's decision in *Minnesota v. Carter*, No. 97-1147 (Dec. 1, 1998) supports Houghton's position that *her own* belongings are entitled to Fourth Amendment protection. 15

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No. 98-184

In The
Supreme Court Of The United States
October Term, 1998

THE STATE OF WYOMING,

Petitioner,

v.

SANDRA HOUGHTON

Respondent.

On Petition for a Writ of Certiorari to the
Wyoming Supreme Court

BRIEF *AMICUS CURIAE* IN SUPPORT OF RESPONDENT SANDRA HOUGHTON

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

I. STATEMENT OF *AMICUS CURIAE* INTEREST AND INTRODUCTION[1]

---

[1] The parties have consented to the filing of this brief. Counsel for The Rutherford Institute authored this brief in its entirety, with able research assistance from Aaron Brinkman, Columbia Law School, J.D. 2000. No person or entity, other than the Institute, its supporters, or its counsel, made a monetary contribution to the preparation or submission of this brief.

The Rutherford Institute (TRI) is a non-profit organization established in 1982 and based in Charlottesville, Virginia, providing legal services nationwide in defense of civil liberties and human rights. Attorneys affiliated with the Institute have appeared numerous times before this Court on such matters, most recently as counsel of record for Respondent in *Arkansas Educational Television v. Forbes*, Sup.Ct. No. 96-779 (October Term, 1996).

II. SUMMARY OF ARGUMENT

While this case raises a plethora of fascinating Fourth Amendment issues, The Rutherford Institute would like to first bring another matter to the attention of the Court. *See* Supr. Ct. R. 37.1. TRI urges this Court to first consider the preliminary issue of jurisdiction. The Wyoming Supreme Court's ruling should be left undisturbed by this Court, under the criteria established in *Michigan v. Long*, 463 U.S. 1032 (1983), because the decision rests on adequate and independent state grounds.

If the Court asserts jurisdiction over this case, it should affirm the judgment of the Wyoming Supreme Court because the Fourth Amendment protects a passenger in a vehicle from searches of her belongings where the police officer lacks independent suspicion of that passenger or independent probable cause to believe her belongings contain evidence of a crime.

III. ARGUMENT

A. Adequate independent state grounds existed

for the Wyoming Supreme Court judgment.

1. The Wyoming Supreme Court's ruling did not rest primarily on federal law.

In *Michigan v. Long*, 463 U.S. 1032 (1983), this Court set out criteria explaining when it will decline to review a decision of a state supreme court because the case rests on adequate and independent state law grounds.

> [W]hen . . . a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the fact of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so.

Id. at 1040-41.

The Wyoming Supreme Court's decision in *Houghton v. State*, 956 P.2d 363, although citing some illustrative federal cases, is sufficiently based on non-federal sources and reasoning to clearly demonstrate independent and adequate state grounds for judgment. The Wyoming Supreme Court relied primarily on non-federal law and arrived at the ruling which it judged to best comply with its own state precedent in the law of search and seizure. Even though the opinion arguably lacks a single explicit statement that the decision rests on independent state grounds, the evidence of such independent grounds is ample. *Michigan v. Long* is best followed, and its interests best served, by this Court's decision to decline jurisdiction in this case.

The Wyoming Supreme Court's decision in *Houghton* is striking for the number and quality of citations made to non-federal law. The court analyzed cases from sixteen other states, eight prior Wyoming Supreme Court decisions, eight federal district or circuit court decisions, and nine United States Supreme Court decisions. The Wyoming court discussed at length the strengths and weaknesses of the legal tests used in various jurisdictions before settling on the one it chose.

The case before the Court today is in stark contrast to the grounds of the state court opinion that this Court faced in *Michigan v. Long*. The Michigan Supreme Court decided *People v. Long (I)*, 320 N.W.2d 866 (Mich. 1982), *rev'd sub nom., Michigan v. Long*, 463 U.S. 1032 (1983), *on remand*, *People v. Long (II)*, 359 N.W.2d 194 (Mich. 1984) (reaching same result on different federal grounds), using only one state precedent and relying on federal authority for the remainder of its opinion. The one state case was cited for a point only tangential to the main argument. *See Long (I)*, 320 N.W.2d at 870, n.8. The opinion in that case was heavily weighted by federal authority. In fact, the state court itself made clear that the controlling authority for the decision was *Terry v. Ohio*, 392 U.S. 1 (1968).

Another telling difference between *Michigan v. Long* and the case today before this Court is how differently the Supreme Courts of each state handled the decision from the court below it. In Wyoming, there is no intermediate appellate court, so the Supreme Court of Wyoming heard this case on appeal directly from the trial court. The decision of the district judge to deny Houghton's motion to suppress the evidence against her was based on *California v. Acevedo*, 500 U.S. 565 (1991). This may appear analogous to the case in *People v. Long (I)*, where

the lower court's ruling was based on *Terry v. Ohio* and the Michigan Supreme Court made its decision discussing the requirements under that controlling precedent. However, in contrast, the Wyoming Supreme Court immediately began its discussion by distinguishing the federal precedent in *Terry* from the Wyoming precedents of *Guerra v. State*, 897 P.2d 447 (Wyo. 1995), *Saldana v. State*, 846 P.2d 604 (Wyo. 1993), and *Hall v. State*, 911 P.2d 1364 (Wyo. 1996). The Wyoming Supreme Court used *Acevedo* only as one of many persuasive authorities. *See Houghton*, 956 P.2d at 365-66. In addition, the Wyoming Supreme Court acknowledged in its opinion that the Wyoming state constitution is somewhat stronger in its protection from unreasonable searches and seizures than its federal counterpart. *Houghton*, 956 P.2d at 366, n. 2, *citing Wyoming Const.*, art. 1, § 4. This evidence shows the intent of the Wyoming Supreme Court to establish an independent ground for its decision based on state law precedents but informed by precedents from federal and other state cases.

Finally, the Wyoming Supreme Court was clearly concerned primarily about complying with its own law, not applying federal law. The ground for deciding the case was not how well state law comported with federal precedents (i.e. dependent grounds), but rather, how well the particular search and seizure test chosen from an analysis of cases from federal law, state law, and the laws of other jurisdictions comported with Wyoming precedents (i.e. independent grounds). The Wyoming Supreme Court determined that:

> the 'notice' approach most closely adheres to our analysis in previous cases. *See Gronski v. State*, 910 P.2d 561, 564 (Wyo. 1996) (warrantless search of duffel bag in trunk of car held proper because probable cause existed to believe the

> duffel bag contained marijuana) and *Hunter v. State*, 704 P.2d 713, 717 (Wyo. 1985) (warrantless search defined by the object and the places in which there is probable cause to believe it may be found).

Houghton, 956 P.2d at 370.

It is Justice Golden's dissenting opinion, not that of the majority in *Houghton*, which relies primarily on federal law. Arguing that Fourth Amendment precedent clearly requires affirming the district court's conviction of Houghton, the dissent quotes almost entirely from federal law. *See Houghton*, 956 P.2d at 372-73 (Golden, J. dissenting). To the dissent, then, the federal law on the issue compelled the affirmance of the lower court's opinion. The majority, however, took great pains to analyze the issue independently, examining the approaches of various sovereigns, and coming to an independent conclusion that was arguably at odds with some federal law on the question.

Petitioners rely on footnote two of the Wyoming Supreme Court's opinion in *Houghton v. State* to assert that the court was intending to rest its decision on federal grounds alone. *Brief for Petitioners* at 4, n. 2. In the court's footnote, it stated that the Wyoming state constitution's protection from searches and seizures is "somewhat stronger than its federal counterpart" and "although Houghton's claims rely on both federal and state constitutional mandate, she does not distinguish the protection afforded by the Wyoming constitution from that of its federal counterpart." *Houghton*, 956 P.2d at 366, n.2, *citing Hall v. State*, 911 P.2d 1364, 1368 (Wyo. 1996), and *Gronski v. State*, 910 P.2d 561, 566 (Wyo. 1996). By citing *Gronski*, the Wyoming Supreme Court was

signalling its refusal to broaden state constitutional protection in the absence of specific briefing on that issue. *Gronski* ruled that "until appropriate state constitutional analysis is presented, an invitation that we should expand the rights protected by the state constitution beyond the protection provided by the federal constitution will not receive the court's attention." 910 P.2d at 565, *citing Goettl v. State*, 842 P.2d 549, 557 (Wyo. 1992). In other words, where a controlling federal precedent exists, the court will not rule *ex post* that the state constitution extends beyond that precedent unless one of the parties presents an independent state constitutional argument for doing so. However, in the absence of such a controlling federal precedent the state court is free to make independent legal determinations about the protection its constitution affords to criminal defendants.

Thus the Wyoming Supreme Court in *Houghton* first surveyed the legal landscape to determine if there was a federal precedent controlling, *see Houghton*, 956 P.2d at 366-369, and then applied what they found to be the most reasonable standard, and the one most rationally related to its own settled state law. *See Houghton*, 956 P.2d at 369-371. In such a situation, the court is ruling on grounds that are independent of federal law.

2. The Wyoming Supreme Court did not feel "'compelled'" by federal constitutional considerations to "'construe its own law in the manner it did.'" *Michigan v. Long*, 463 U.S. 1032, 1044 (1983)(quoting *Zacchini v. Scripps-Howard Braoadcasting Co.*, 433 U.S. 562, 568 (1977)).

The Wyoming Supreme Court cited more non-federal

than federal law and selected a legal test based on how well it complied with state law. *See* section "A" *supra.* In these circumstances, absent compelling contrary evidence, no one could credibly argue that the Wyoming Supreme Court felt "'compelled'" by federal constitutional considerations to "'construe its own law in the manner it did.'" *Michigan v. Long,* 463 U.S. at 1044 (quoting *Zacchini v. Scripps-Howard Braoadcasting Co.*, 433 U.S. 562, 568 (1977)).

3. Refusing jurisdiction in this case furthers the purposes of *Michigan v. Long*.

The criteria set forth in *Michigan v. Long* were not simply a convenient method to manage the Court's docket, but rather an attempt to properly balance a number of vital competing interests. On the one side of the balance, this Court recognized the need to allow state courts to interpret state laws, 463 U.S. at 1039, to preserve federalism by respecting the independence of state courts, *id,*. and to avoid rendering advisory opinions. *Id.* On the other hand, the Court also wanted to avoid delay and increase the efficiency of judicial administration, *id.* at 1039-40, and promote uniformity of federal law. *Id.* at 1040.

Declining jurisdiction in this case would best serve the interests that *Michigan v. Long* sought to balance. While there does exist a lack of uniformity about the proper interpretation of this area of search and seizure law, choosing this case to clarify it would do too much damage to the independence of state courts. Wyoming has given a high degree of protection to its citizen. Overturning this decision and insisting on a lower degree of protection will not ensure the protection of an important federal right -- it will only force the Wyoming Supreme Court to go back in this case to reiterate its higher

level of protection. Not only will this process waste judicial resources, but it will also constitute an advisory opinion. As this Court reasoned in *Herb v. Pitcairn*, "if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion" 324 U.S. 117, 126 (1945)(quoted approvingly in *Michigan v. Long*, 463 U.S. at 1042).

In the years since this Court decided *Michigan v. Long*, the Court has routinely assumed and extended its jurisdiction over the decisions of state supreme courts, sometimes with and sometimes without a rigorous analysis under *Michigan v. Long*. *See, e.g., Pennsylvania v. Labron*, 518 U.S. 938 (1996); *Arizona v. Evans*, 514 U.S. 1 (1995); *Harris v. Reed*, 489 U.S. 255 (1989); *Montana v. Hall*, 481 U.S. 400 (1987)(per curiam); *Delaware v. Van Arsdall*, 475 U.S. 673 (1986); *Caldwell v. Mississippi*, 472 U.S. 320 (1985); *Ponte v. Real*, 471 U.S. 491 (1985). Indeed, in *Pennsylvania v. Labron* this Court was undeterred by even the plain statement of the Pennsylvania Supreme Court that it was basing its judgment on the Pennsylvania constitution and Pennsylvania law, rather than on federal law.

In *Michigan v. Long*, this Court established a high hurdle with a rebuttable presumption of no adequate and independent state grounds unless the state court plainly so states. In *Pennsylvania v. Labron* this Court raised the bar further, turning *Michigan v. Long*'s rebuttable presumption into a seemingly irrebuttable presumption of no adequate state grounds, regardless of statements by the state court to the contrary by the state court. TRI urges this court to re-examine the important issues of respect for state courts, finality, federalism, and judicial economy it sought to protect in

Michigan v. Long. Because the Court has indicated its unwillingness to revise the *Michigan v. Long* test, we respectfully suggest that the Court at least return to an application of the *Michigan v. Long* doctrine which adequately protects these interests.

B. If the Court asserts jurisdiction over this case, it should affirm the judgment of the Wyoming Supreme Court.

1. The Fourth Amendment protects a passenger in a vehicle from searches of her belongings where the police officer lacks independent suspicion of that passenger or independent probable cause to believe her belongings contain evidence of a crime.

This Court established in 1948 that searching a passenger in a vehicle for evidence of a crime, without independent probable cause, was unlawful under the Fourth Amendment. *United States v. Di Re*, 332 U.S. 581 (1948). The Court explained, "We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled." *Id.* at 587. The same Fourth Amendment which protected the defendant in *Di Re* from a search of his person protects Houghton from a search of her "effects." The Fourth Amendment to the United States Constitution guarantees Houghton the right "to be secure in [her] person[], houses, papers and effects." The police officer in this case who searched Houghton's purse admitted that he did not have probable cause to believe that Houghton was involved in any illegal activity. (J.A. 21) Houghton had not been arrested prior to the search of her purse, and no contraband in her purse was in plain view. The search of her

purse without individualized suspicion, probable cause or warrant was therefore unreasonable and in violation of the Fourth Amendment.

None of the subsequent cases cited by petitioner alters that basic analysis. The holding of *New York v. Belton*, 453 U.S. 454 (1981), for example, is inapplicable to the case at bar. *Belton* held that a search incident to arrest may include a search of the passenger compartment and containers in it. This extensive search is justified by heightened security risks applicable to an arrest situation, and the need to prevent the destruction of evidence. *Id.* at 457. However, these justifications are not triggered when no one has been arrested. In Houghton's case, the search which included her purse was not a search incident to arrest at all, since neither Houghton nor the driver of the car were arrested prior to the search. In fact, the police ultimately never arrested the driver, *Houghton*, 956 P.2d at 365, and arrested Houghton only after discovering the contents of her purse.

Nor do the holdings in *United States v. Ross*, 456 U.S. 798 (1982) or *California v. Acevedo*, 500 U.S. 565 (1991) render a search of Houghton's purse reasonable under the Fourth Amendment. *Ross* established that the scope of a warrantless automobile search is no broader or narrower than could be authorized by a warrant. 456 U.S. at 825. Thus, under *Ross*, police officers who have probable cause to search a motor vehicle may presumptively search all containers within the vehicle that could contain the object of the search. *Acevedo* clarified *Ross* and its ancestor, *Carroll v. United States*, 267 U.S. 132 (1925):

> We therefore interpret *Carroll* as providing one rule to govern all automobile searches. The police may search an automobile and the containers

> within it where they have probable cause to believe contraband or evidence is contained.

Acevedo, 500 U.S. at 580.

Both *Ross* and *Acevedo* were based on, and drew their justification from, the "automobile exception," articulated in *Carroll v. United States*, *supra*. The *Carroll* exception, as explained in *Ross* and *Acevedo*, is an exception to the warrant requirement, not an exception to the requirement for probable cause. Just as a search pursuant to a search warrant may not exceed the scope of the warrant, a warrantless search of an automobile permitted by *Carroll v. United States* may not exceed the bounds of probable cause.

The Fourth Amendment permits a warrantless search of an automobile, provided probable cause exits. *Carroll v. United States, supra*. This probable cause presumptively extends to all the containers within the car that could contain the object of the search. *United States v. Ross*, *supra*. However, the *Ross* presumption does not cover objects which officers know are unconnected to the search. When police have information to negate the presumption that a container contains the object of the search, then they must not continue that aspect of the search. Thus, this Court stated in *Ross* that "probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase." 456 U.S. at 824. The Court also stated in *Zurcher v. Stanford Daily*, 436 U.S. 547, 559 (1978) that the "critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought." If such cause is lacking or negated, the search is not reasonable.

Where a purse belongs to an individual who is unconnected to the suspicion giving rise to probable cause, the presumption must be that the purse does not contain the object of the search. This is so because generalized probable cause dissipates in the face of particular information to the contrary.

We do not mean to argue that a passenger's effects are permanently exempted from search. If the police officer can establish suspicion of the particular passenger, or probable cause to believe the passenger's effects contain evidence of the crime, then her purse can be searched. Nor would we require that officers make "nice distinctions" about the ownership of each object in a vehicle prior to searching them. *See Ross*, 456 U.S. at 821. Where the officer does have information about ownership, however, he cannot ignore that information so as to give him leave to conduct an unreasonable search.

In the case at bar, the officer had no individualized suspicion of Houghton before searching her purse. He testified that prior to the search, he did not suspect her of illegal activity. (J.A. 21) At trial, the state proved that no other occupant of the car had opportunity to stash items in Houghton's purse immediately prior to or during the stop. *Houghton v. State*, 956 P.2d at 370-371. Prior to searching the purse, the officer knew or should have known that the purse did not belong to the driver. *Id.* at 370. When he opened the purse and pulled out the wallet with Houghton's identification, he had actual knowledge that the purse was Houghton's. Continuing the search in the face of specific knowledge that the purse was Houghton's, without individualized probable cause as to Houghton or her purse, was an unreasonable search of Houghton's effects under the Fourth Amendment.

The Court's *amicus* observes that two of the briefs in this case state or imply that the police officer's suspicion of the

driver can somehow be transferred to the passenger because the two are engaged in the "common consensual activity" or "common purpose" of travelling together and may reasonably be assumed to be engaged in other common activities. Brief for the United States as *amicus curiae* at 6, 12 (hereinafter "U.S. brief"); Brief for the Petitioner at 31. The United States asserts that this Court has implicitly recognized that "when evidence of a crime exists in an automobile, the passengers and the driver may well be involved in that crime together." U.S. brief at 13. Such an assumption would overrule this Court's holding in *United States v. Di Re, supra.* It would also present serious threats to the right of privacy, and the First Amendment right of association in this country. This Court has steadfastly refused to adopt the presumption of guilt by association in authorizing searches under the Fourth Amendment. For example, in *Ybarra v. Illinois*, 444 U.S. 85 (1979), this Court held that a patron's mere presence in a tavern, without more, did not justify a search of that patron under a search warrant issued for the tavern. The Court insisted that the probable cause standard as to that patron was necessary to balance his rights against the police officer's interests. *Id.* at 95-96.

Guilt by association is particularly inappropriate in this case. The driver was observed to be in possession of drug paraphernalia and he admitted to drug use. Even if the police officers suspected him of drug possession, "possession" is an individualized crime, and the officers had no cause to suspect Houghton of either drug use or possession. If Houghton can be suspected under these circumstances, then the police would have cause to search the briefcase of a passenger in a limousine if the driver was suspected of drug use. The Fourth Amendment does not tolerate such invasions of privacy on such tenuous and dangerous justification.

2. This Court's decision in *Minnesota v. Carter*,

No. 97-1147 (Dec. 1, 1998) supports Houghton's position that *her own* belongings are entitled to Fourth Amendment protection.

This Court recently ruled in *Minnesota v. Carter*, No. 97-1147 (Dec. 1, 1998), that persons who are temporarily in someone else's home to conduct business have no "legitimate expectation of privacy" in that home, and thus cannot seek Fourth Amendment protection from an unreasonable search of the home. This holding is not applicable to the case before us. Houghton is asking this Court to recognize her expectation of privacy in *her own* handbag, not in the handbag of someone else.

The Fourth Amendment guarantees Houghton the right "to be secure in [her] person[], houses, papers and effects." None of the parties or *amici curiae* contest the fact that her purse is one of her effects, falling under Fourth Amendment protection. No member of the Court in *Minnesota v. Carter* contested the fact that the Fourth Amendment protects, at the very least, a person's own self and home and papers and effects. *Minnesota v. Carter*, therefore, reinforces Houghton's position.

IV. CONCLUSION

The Rutherford Institute, as *amicus curiae*, urges this court to refuse to assert jurisdiction over this case because the judgment of the Wyoming Supreme Court can be shown, under the doctrine of *Michigan v. Long*, 463 U.S. 1032 (1983), to be based on adequate and independent state grounds.

If the Court asserts jurisdiction over this case and decides it on the merits, this Court's *amicus curiae* urges the Court to affirm the judgment of the Wyoming Supreme Court reversing

Houghton's conviction based on a passenger's Fourth Amendment right to be free from unreasonable searches of her belongings.

Respectfully submitted,

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

THE STATE OF WYOMING,
Petitioner,

v.

SANDRA HOUGHTON,
Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF WYOMING

BRIEF OF NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

When the circumstances that create probable cause to search an automobile do not provide probable cause with respect to a passenger's purse, does the automobile exception to the warrant requirement nevertheless authorize a search of the purse?

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INTEREST OF *AMICUS CURIAE*[1]

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STATEMENT OF THE CASE

On July 23, 1995, Officer Delane Baldwin stopped an automobile driven by David Young. According to Officer Baldwin, the automobile was speeding and a brake light was faulty. Respondent Sandra Houghton was a passenger in Young's car. As tens of millions of American women do

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[1] This *amicus curiae* brief is submitted in support of the Respondent, Sandra Houghton. By letters filed with the Clerk of the Court, Petitioner and Respondent have consented to the filing of this brief. As required by Rule 37.6 of this Court, *amicus curiae* submits the following: no party other than counsel authored this brief in whole or in part; no person or entity other than *amicus curiae*, its members, or its counsel have made a monetary contribution to the preparation or submission of this brief.

every day, Houghton had taken her purse with her. J.A. 135-37.

After approaching the vehicle, Officer Baldwin noticed a syringe in Young's shirt pocket and questioned Young about it. According to Officer Baldwin, Young said that he used the syringe to take drugs. Officer Baldwin then ordered the occupants out of the vehicle, patted them down, and proceeded to search the car. He discovered a closed "cloth lady's purse." J.A. 19, 143; Pet. App. 4.

Officer Baldwin knew the purse belonged to Ms. Houghton. Ms. Houghton told him so, and the first item that the officer discovered in the purse was her identification. Officer Baldwin also knew that men generally do not carry purses. J.A. 18-21.

Furthermore, the officer did not testify that he observed any furtive movements by Houghton, or any movements by Young indicating that he was depositing drugs into Houghton's purse. To the contrary, the occupants of the car were constantly under police observation and there were no suspicious movements within the car. *See* Pet. App. 18.

Thus, as the officer admitted, there was no probable cause with respect to Ms. Houghton or her purse. J.A. 19. Nonetheless, the officer opened the purse, and found two wallets. Still without probable cause to believe that Ms. Houghton's purse contained drugs, he opened and searched the wallets. Officer Baldwin found illegal drugs and arrested Ms. Houghton. J.A. 19, 21.

Prior to trial, Ms. Houghton moved to suppress the evidence on the basis that the search violated the Fourth Amendment. The district judge denied the motion. On appeal from Ms. Houghton's conviction, the Wyoming Supreme Court reversed, concluding that the search was unconstitutional. The court stated that it could not agree that "the automobile exception removes from judicial review *all* searches of *all* containers physically capable of containing the object of the search. To so rule would provide a wholesale surrender of Fourth Amendment protection upon entering an automobile." Pet. App. 21 (emphasis added).

SUMMARY OF THE ARGUMENT

This case is about probable cause, and this Court's cases defining the nature and quantum of evidence that comprise probable cause. This case is not about the warrant requirement, or this Court's discussion of the exception to that requirement in the context of automobile searches. With this in mind, this Court should affirm the decision of the Wyoming Supreme Court.

First, there was no probable cause to search Ms. Houghton's purse. It is well settled that probable cause requires individualized suspicion, and it is uncontroverted that Officer Baldwin lacked individualized suspicion with respect to Ms. Houghton or her purse. Insofar as the State suggests that some notion of "general" probable cause sufficed, the State's position must be rejected, for it is inconsistent with the very nature of probable cause. Indeed, the purpose of the Fourth Amendment was to replace the notion of general suspicion with the requirement of individualized suspicion.

Second, the automobile exception to the warrant requirement does not relax the requirements of probable cause. The automobile exception removes the need for a warrant for automobile searches, but does not dilute the level of suspicion required for probable cause. The requirements necessary to establish probable cause during an automobile search are the same as those required for probable cause in all other contexts. The State's attempt to distinguish the seminal probable cause decisions of this Court on the ground that they do not involve automobile searches is, therefore, unavailing. In addition, the State's assertion that searches of passenger's belongings are controlled by the statements about containers in *Ross* and *Acevedo* is untenable. Those cases did not address passengers or their belongings, and certainly did not hold that a passenger's purse could be searched simply because the driver was suspected of using drugs. Such a holding would not only create a warrant exception in automobile search cases, but a probable cause exception as well.

Third, contrary to the State's arguments, the circumstances of automobile searches do not justify a retreat from the requirements of probable cause. The State suggests that absent any specific and individualized suspicion, it is reasonable to assume that drivers and passengers are engaged in the same activities merely because they are riding together in a car. This suggestion, however, is bare conjecture. The State also argues that requiring officers to distinguish between passengers' items and drivers' items is unworkable. But Officer Baldwin had no problem making this distinction; he testified that he knew that the purse belonged to Ms. Houghton. Indeed, police officers make probable cause determinations every day of the week in a variety of contexts. Finally, the State argues that affirming the decision of the Supreme Court of Wyoming would create

an anomaly because the decision would be inconsistent with the rule concerning searches incident to arrest set forth in *New York v. Belton*, 453 U.S. 454 (1981). But pre-arrest automobile searches and searches incident to arrest implicate different considerations and thus call for different rules. In any event, the State's position would create an unjustified anomaly concerning the rules governing searches of an automobile passenger and those governing searches of a passenger's belongings.

ARGUMENT

POLICE OFFICERS SHOULD BE NOT PERMITTED TO SEARCH A PASSENGER'S BELONGINGS WITHOUT PROBABLE CAUSE SPECIFIC TO THE PASSENGER OR HER BELONGINGS.

The search of Sandra Houghton's purse was conducted without probable cause to believe that the purse contained contraband or evidence of a crime, and therefore did not satisfy the requirement that probable cause be based on specific and individualized suspicion. The State admits as much, *see, e.g.*, Petitioner's Brief ("Pet. Br.") at i ("police . . . have no probable cause specific to [Houghton's] purse or [Houghton]"), and is left to argue that probable cause is different when applied to an automobile. *See* Pet. Br. at 20. It contends that under the automobile exception, probable cause specific to a passenger's belongings is not necessary when there is probable cause to search the car generally. *See* Pet. Br. at 23. This proposition—that the specific and individualized suspicion requirement of probable cause is relaxed in the context of a car—is contrary to this Court's cases explaining the probable cause requirement and the automobile exception to the warrant requirement.

A. PROBABLE CAUSE MUST BE SPECIFIC AND INDIVIDUALIZED.

The Fourth Amendment's "individualized suspicion requirement has a legal pedigree as old as the Fourth Amendment itself." *Vernonia Sch. Dist. 47J v. Acton,* 515 U.S. 646, 678 (1995) (O'Connor, J., dissenting). Indeed, the Framers's insistence on the requirement of specific and individualized suspicion grew out of *suspicionless* searches permitted by general warrants and writs of assistance in England and early America. *See* Tracey Maclin, *The Complexity of the Fourth Amendment: A Historical Review*, 77 B.U. L. Rev. 925, 938 (1997); Thomas K. Clancy, *The Role of Individualized Suspicion in Assessing the Reasonableness of Searches and Seizures*, 25 U. Mem. L. Rev. 483, 528 (1995) (describing the "core complaint" of the colonists as the general, baseless searches that were executed without "individualized suspicion"). Such warrants and writs "were not issued as a result of any information that contraband was stored at a specific place; instead, the customs officials could search wherever they chose." *Id.* at 500.

The colonists' dissatisfaction with general warrants and writs of assistance, and their concomitant drive to replace general suspicionless searches with specific and individualized searches, grew in part out of the 18th century corollary of the car—the boat. *See* Maclin, 77 B.U. L. Rev. at 962. On the eve of the American Revolution, British agents, without probable cause, searched and seized ships belonging to Henry Laurens and John Hancock. Both Laurens and Hancock organized loud and effective political protests concerning the general searches of their vessels. *Id.* The result of these and similar protests was not only the

Fourth Amendment, but also the Collection Act of July 31, 1789, which required individualized suspicion before the search of a vessel. *See Vernonia Sch. Dist.*, 515 U.S. at 671 (O'Connor, J., dissenting) (describing the Collection Act of 1789 as the most significant of all early search statutes, "'for it identified the techniques of search and seizure that the framers of the amendment believed reasonable while they were framing it'" (quoting W. Cuddihy, *The Fourth Amendment: Origins and Original Meaning* 1490-91 (1990) (Ph.D. Dissertation at Claremont Graduate School)).

For the last 200 years, this Court has remained faithful to the idea that a reasonable search requires specific and individualized probable cause. Today, probable cause requires a finding that, under the totality of the circumstances, "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Phrased differently, it requires "known facts and circumstances . . . sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found." *Ornelas v. United States*, 517 U.S. 690, 696 (1996); *Wong Sun v. United States*, 371 U.S. 471, 479 (1963).

Accordingly, a finding of probable cause requires individualized suspicion based on facts and circumstances specific to the object or person to be searched. *See Ybarra v. Illinois*, 444 U.S. 85, 91 (1979) ("Where the standard is probable cause, a search . . . of a person must be supported by probable cause particularized with respect to that person."); *Sibron v. New York*, 392 U.S. 40, 62-63 (1968) (no probable cause to search person talking to narcotics dealers where officer was "completely ignorant" of specific facts and circumstances implicating person); *United States v. Di Re*, 332 U.S. 581, 587 (1948) (person's "mere presence

in a suspected car" does not amount to probable cause to search that person). *See also Skinner v. Railway Labor Executives' Ass'n,* 489 U.S. 602, 624 (1989) ("search[es], . . ., as a general matter," require "individualized suspicion"); *Brown v. Texas*, 443 U.S. 47, 52 (1979) ("The fact that appellant was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct."); *Vernonia Sch. Dist.*, 515 U.S. at 667 (O'Connor, J., dissenting) (discussing "requirement of individualized suspicion"); *National Treasury Employees Union v. Von Raab,* 489 U.S. 656, 680-81, 684 (1989) (Scalia, J., dissenting) ("individualized" or "particularized" suspicion is necessary component of reasonable search and seizure absent some "demonstrated" "social necessity"). *See also Terry v. Ohio,* 392 U.S. 1, 21 n.18 (1968) ("Th[e] demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence.").

Specificity and "individualized suspicion" are such essential components of a reasonable search that they are ordinarily required even when probable cause is not, in the context of lesser intrusions that require only "reasonable suspicion." *See, e.g., Skinner,* 489 U.S. at 624 (Even "[w]hen the balance of interests precludes insistence on a showing of probable cause, we have usually required 'some quantum of individualized suspicion' before concluding that a search is reasonable.") (quotation omitted); *United States v. Cortez*, 449 U.S. 411, 418 (1981) (investigative stop of a vehicle must be supported by the "suspicion that the particular individual being stopped is engaged in wrongdoing"). These cases underscore the principle that probable cause must be specific and individualized.

Three decisions of this Court—*Di Re*, *Sibron* and *Ybarra*—explore the specific and individualized nature of probable cause. In *Di Re*, police approached a car on the basis of a tip from an informant that the driver of the car was selling counterfeit gasoline coupons. 332 U.S. at 583. The Court assumed, without deciding, that probable cause existed to search the car. *Id.* at 586. But the police went further, and searched Michael Di Re, a passenger in the car, even though none of the information supplied by the informant implicated him. *Id.* at 583. "All [the police] had was his presence." *Id.* at 592. The Court characterized the government's attempt to base probable cause on Di Re's "mere presence" in the car as "farfetched," and held that "mere presence" was insufficient to establish probable cause. *Id.* at 592-94. The Court concluded that "a person, by mere presence in a suspected car, [does not] lose[] immunities from search of his person to which he would otherwise be entitled." *Id.* at 587.

In *Sibron*, police conducted a search of the defendant after observing him talk to known narcotics addicts over an eight hour period. 392 U.S. at 40. In concluding that these facts did not justify a search, the Court emphasized that the officer "had no information concerning [Sibron]." *Id.* at 62. "The inference that persons who talk to narcotics addicts are engaged in the criminal traffic in narcotics is simply not the sort of reasonable inference required to support an intrusion by the police upon an individual's personal security." *Id.*; *see also id.* at 73 ("There must be something . . . in the activities of the person being observed or in his surroundings that affirmatively suggests particular criminal activity, completed, current, or intended.") (Harlan, J., concurring).

The third case, *Ybarra*, involved a warrant to search a tavern and its bartender for heroin. 444 U.S. at 85. The

warrant was issued based on information indicating that the bartender was selling heroin. *Id.* at 88. Upon executing the warrant, the police not only searched the premises and the bartender, but also each customer, including the defendant Ventura Ybarra. The police "knew nothing in particular about Ybarra," the Court noted, "except that he was present . . . in a public tavern at a time when the police had reason to believe that the bartender would have heroin for sale." *Id.* at 91. This was not enough to establish probable cause to search Ybarra. "[A] person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause" because of the absence of "particularized" suspicion. *Id.* The Court stressed that "Ybarra made no gestures indicative of criminal conduct, made no movements that might suggest an attempt to conceal contraband, and said nothing of a suspicious nature to the police officers." *Id.* at 93.

Based on these cases, the conclusion that officer Baldwin lacked probable cause to search Ms. Houghton's purse is easy and uncontroversial. The mere fact that the driver of the automobile in which Sandra Houghton was riding was a drug user did not support any *individualized* suspicion with respect to Ms. Houghton or her purse. Under *Ybarra*, a person's "mere propinquity to others independently suspected of criminal activity" does not authorize an officer to conduct a search of that person. Therefore, Ms. Houghton's presence in David Young's car did not authorize Officer Baldwin to search her belongings.

The State and its *amici* attempt to distinguish these cases[2] on grounds previously deemed insignificant by this Court. First, they argue that *Di Re* and *Ybarra* involved searches of people as opposed to searches of objects. *See, e.g.*, Brief for the United States as *Amicus Curiae* Supporting Petitioner ("U.S. Br.") at 18-19. Probable cause, however, is required to search citizens *and* their effects. *See Payton v. New York*, 445 U.S. 573, 586-87 (1980) ("[I]t is . . . well settled that objects such as weapons or contraband found in a public place may be seized by the police without a warrant . . . *assuming that there is probable cause to associate the property with criminal activity.*" (emphasis added)); *Henry v. United States*, 361 U.S. 98, 104 (1959) ("The police must have reasonable grounds to believe that the *particular package* carried by the citizen is contraband." (emphasis added)); *see also Arizona v. Hicks*, 480 U.S. 321, 326-28 (1987) (holding that search of stereo equipment required probable cause to believe that equipment was stolen and noting that the Court has never drawn "categorical distinction[s]" between different types of searches and seizures when discussing "degree of justification needed to establish the reasonableness of police action"). The State fails to provide a principled explanation as to why personal belongings should be treated differently than passengers.[3]

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[2] The State does not cite or discuss *Di Re*. Accordingly, this brief addresses the arguments concerning *Di Re* advanced by the *amici* supporting the State.

[3] This is not to say that an individual must be suspected of wrongdoing before her belongings can be searched, but rather that there must be specific and individualized suspicion that the belongings contain contraband or evidence of a crime. Thus, cites to *Zurcher v. Stanford Daily*, 436 U.S. 547 (1978), do not help the State. The State cites *Zurcher* for the proposition that a search may be conducted even where there is not probable cause that the person being searched has done anything wrong. The search in *Zurcher*, however, was based on probable

Then, without regard to *Di Re*, an automobile case explaining probable cause exactly the same way as the *Ybarra* Court did, the State argues that *Ybarra* does not apply because the search in that case did not occur in an automobile. *See* Pet. Br. at 20, 25. The *Ybarra* Court, however, explicitly relied on *Di Re*, and explained that "the governing principle in both cases is basically the same." 444 U.S. at 95. The concerns of the colonists about overbroad searches were not limited to searches about stationary premises, as the protests of British searches of ships demonstrate. As fully described in the next section, the requirements for probable cause are the same regardless of whether a search is conducted in a car or on fixed premises.

B. THE COURT'S AUTOMOBILE SEARCH CASES HAVE NOT CHANGED THE REQUIREMENT THAT PROBABLE CAUSE BE SPECIFIC AND INDIVIDUALIZED.

The State contends that, under the automobile exception, probable cause specific to a passenger's belongings is not necessary to search those belongings. *See* Pet. Br. at 23 ("given existence of probable cause to search the vehicle *generally*, an additional measure of probable cause should not be required" (emphasis added)). In effect,

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cause to believe that evidence of a crime was located at a student newspaper office. *Id.* at 550. In this case, however, there was no cause to think that Houghton's purse contained evidence of a crime or contraband. If the officers in this case had reason to think that Houghton's purse contained evidence of a crime or contraband (whether put there by Houghton herself or by the driver), they would have been permitted to search it. As the State concedes, however, there was no probable cause specific to the purse.

the State is arguing that the automobile exception not only removes the need for a warrant, but also changes the contours of probable cause by removing the requirement of specific and individualized suspicion. Despite the State's urging, however, this requirement applies to automobile searches.

1. The nature of the automobile exception.

The State mischaracterizes the automobile exception. The exception, as delineated by *Carroll v. United States*, 267 U.S. 132 (1925), and its progeny, only concerns the need for a warrant. It does not alter the probable cause requirements for a search. "[The *Carroll*] decision merely relaxed the requirements for a warrant on grounds of practicality. It did not dispense with the need for probable cause." *Henry*, 361 U.S. at 104.

Carroll was clear on this point. "[C]ontraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant" only if "there is known to a competent official authorized to search, *probable cause* for believing that their vehicles are carrying contraband or illegal merchandise." *Carroll*, 267 U.S. at 153-54 (emphasis added); *see also Chambers v. Maroney*, 399 U.S. 42, 51 (1970) ("In enforcing the Fourth Amendment's prohibition against unreasonable searches and seizures, the Court has insisted upon probable cause as a minimum requirement for a reasonable search permitted by the Constitution."). As this Court observed in *Arizona v. Hicks*, 480 U.S. 321, 327 (1987), "[d]ispensing with the need for a warrant is worlds apart from permitting a lesser standard of cause for the seizure than a warrant would require."

Indeed, in *Di Re*, a case which the State neglects to cite, the Court addressed, and rejected, the proposition now advanced by the State—that the automobile exception reduces the level of suspicion required for probable cause. There, the government argued that, even in the absence of probable cause to search Di Re, who was a passenger in a vehicle that the police had probable cause to search, "the search of his person was justified as *incident* to [the] search of a vehicle." *Di Re*, 332 U.S. at 583-84, 586 (emphasis added). The Court unequivocally rejected that argument. "We see no ground for expanding the ruling in the *Carroll* case to justify this arrest and search as incident to the search of a car. We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled." *Id.* at 587.

And in *Ybarra*, the Court explicitly recognized that probable cause is the same both inside and outside of an automobile. 444 U.S. at 95. The authorities are therefore clear that the automobile exception does not relax the requirements of probable cause, and that the principles of probable cause set forth in cases such as *Ybarra* and *Sibron* apply to automobile searches.

2. *Ross* and *Acevedo*.

The State's submission that the belongings of an automobile passenger may be searched without probable cause is not supported by either *United States v. Ross*, 456 U.S. 798 (1982), or *California v. Acevedo*, 500 U.S. 565 (1991). Those cases expand only the automobile exception to the warrant requirement and in no way relax the probable

cause requirement. Moreover, unlike *Di Re*, they did not involve the search of a passenger or her purse.

In *Ross*, the police searched Ross's car without a warrant after an informant told the police that he had seen Ross complete a drug transaction using drugs stored in the trunk of Ross's car. The police searched the car's trunk, finding a paper bag. Upon opening the bag, the police found drugs.

Upholding the constitutionality of the search, the Court held that "[t]he scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause." 456 U.S. at 823. Because a warrant would have authorized the search of the bag, the Court found the search reasonable. The Court concluded that the scope of a warrantless search of an automobile is "defined by the object of the search and the places in which there is probable cause to believe that it may be found." *Id.* at 824. *See also Acevedo*, 500 U.S. at 570 (describing *Ross* as allowing "a search of a container or package found inside the car when such a search was supported by probable cause"). The *Ross* Court thus made clear that it was not authorizing the search of "every container." 456 U.S. at 822-23.

Nevertheless, the State appears to assume that *Ross* somehow adopted a diluted version of the probable cause requirement. The Court, however, did not say it was doing so, nor analyze whether such a dilution is justified, as the Court certainly would have done had it intended to alter the longstanding requirement of probable cause. The State points only to a single sentence of *Ross*: "'If probable cause justifies the search of a lawfully stopped vehicle, it justifies

the search of every part of the vehicle and its contents that may conceal the object of the search.'" Pet. Br. at 16-17 (*quoting Ross*, 456 U.S. at 825). The State's interpretation cannot withstand scrutiny.

First, the State ignores the preceding sentence: "We hold that the scope of the warrantless search authorized by that exception is no broader and no narrower than a magistrate could legitimately authorize by warrant." *Ross*, 456 U.S. at 825. The import of the passage in its entirety is to equate the scope of a warrantless search under the automobile exception with the scope of a search that a warrant could legitimately authorize, and there is no question that a magistrate's issuance of a warrant is fully subject to the requirement of probable cause. *See* U.S. Const. amend. IV ("no Warrants shall issue, but upon probable cause").

Second, the Court gave specific examples demonstrating that it did not authorize the search of *every* container: "Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase." *Ross*, 456 U.S. at 824. The Court added that "[p]robable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab." *Id.* These examples refute the notion that *Ross* automatically authorizes a search of each and every container in a vehicle once there is probable cause to search the vehicle.

Third, the *Ross* Court did not address the situation in which the police know, prior to searching a container found

in a car, that it belongs to a passenger whose person and belongings are not implicated by the circumstances giving rise to probable cause to search the car. The *Ross* Court was addressing the typical search of a container in a car, and undoubtedly the existence of probable cause to search a car ordinarily means that there is probable cause to search any container large enough to contain the object of the search. But the situation is different when the police are on notice that the container belongs to a passenger whose person and belongings are not implicated by the circumstances giving rise to probable cause. As Professor Lafave explains, "it is sometimes possible that there will not be probable cause [that] the object sought could be in a certain container within the car, even though the object would fit within that container and even though there is probable cause that the object is somewhere within that vehicle." 3 Wayne R. LaFave, *Search and Seizure* § 7.2(c), at 488 n.113 (3d ed. 1996). The search of Sandra Houghton's purse is that case.

The State's reading of *Ross* would lead to intolerable results. Suppose, for instance, the police stop a taxicab occupied by a lawyer on the way to court. According to the State's argument, if the officer spied a syringe in the driver's pocket, the police could search a lawyer's briefcase even though the lawyer had no relationship to the driver and had done nothing suspicious.

Indeed, the rule proffered by the State would have its greatest impact on those persons who do not drive—including low-income persons who cannot afford the cost of their own automobile—and rely on others for transportation. There are many people in this country who lack the means to travel to a concert, ballgame, or political protest other than in a vehicle shared by several other occupants. In the State's

view, such individuals would essentially forfeit their Fourth Amendment rights every time they step into an automobile driven by another person.

But even if the State were correct, and *Ross* were read to permit suspicionless searches of all containers (including those belonging to passengers), nothing in *Ross* suggests that a purse constitutes such a "container." *See, e.g.*, *Ross*, 456 U.S. at 822 (giving as examples of containers "paper bags, locked trunks, lunch buckets, and orange crates"). Women typically carry purses on their persons or keep them in very close proximity. As noted by one of the *amici* supporting the State, "[t]he Court can take judicial notice that in American society women almost always keep their purses (or pocketbooks) on them, usually on their shoulders, in their hands, or between their arms . . . ." Brief of *Amicus Curiae* National Association of Police Organizations in Support of Petitioner at 10 n.3. A search of a purse bears a closer resemblance to a search of a person's clothing than it does to a search of the kinds of articles the *Ross* Court gave as examples of "containers."

There are good reasons to treat a search of a purse as a search of the person rather than as a search of a container. Not only do women typically keep their purses on them, but purses to a considerable extent serve the same function as pockets in clothing, and they contain highly personal items. *See New Jersey v. T.L.O.*, 469 U.S. 325, 339 (1985) ("students may carry on their persons or in purses or wallets such nondisruptive yet highly personal items as photographs, letters, and diaries"); *United States v. Welch*, 4 F.3d 761, 764 (9th Cir. 1993) ("a purse is a type of container in which a person possesses the highest expectations of privacy"). It is difficult to understand why the contents of a woman's purse

should receive less protection than the contents of a man's (or a woman's) pants pockets.

If Houghton had been carrying the contents of her purse in pockets in her clothing, those materials clearly could not have been searched, since the police lacked probable cause specific to Houghton. *See Di Re*, 332 U.S. at 585. The result should not be different merely because Houghton chose to keep items in her purse instead of in her pockets.

The State's reliance on *California v. Acevedo*, 500 U.S. 565 (1991), is similarly misplaced. That case did not involve a situation where the police lacked probable cause specific to the container that they searched. To the contrary, the issue was whether police may conduct a warrantless search of a container in the trunk of a car where they have probable cause specific to the container, but not with respect to the rest of the car. *Id.* at 567. The Court authorized a warrantless search of the particular container, but it made clear that the police could not search the remainder of the car for which there was no probable cause. *Acevedo*, therefore, is fully consistent with the principle that probable cause requires specific and individualized suspicion.

The Court's cases applying the automobile exception to the warrant requirement have been remarkably consistent: probable cause is always required. Because the Wyoming officers could not point to one objective fact to indicate that Sandra Houghton possessed drugs or that someone had placed drugs in her purse, the officer should not have rummaged through her purse. The Court should not stray from the principle explained in its automobile cases—that searches must be supported by probable cause—or from the principle explained in its probable cause cases—that specific and individualized suspicion is required before conducting a

search. Accordingly, the Court should affirm the Wyoming Supreme Court's holding that the search of Sandra Houghton's purse without probable cause violates the Fourth Amendment.

C. IT IS REASONABLE TO MAINTAIN THE REQUIREMENTS OF PROBABLE CAUSE IN THE CONTEXT OF AUTOMOBILE SEARCHES.

The State and its *amici* seem to suggest that even if probable cause is not present, other considerations militate in favor of searching Ms. Houghton's purse. They argue that specific and individualized suspicion is not necessary to search a passenger's belongings because (1) when there is a reason to believe a driver is involved in illegal activity, it is reasonable to assume that the passenger is engaged in the same illegal activity; (2) it is unworkable to require officers to make probable cause determinations with respect to passengers' belongings; and (3) requiring probable cause to search a passenger's belongings would create an anomaly in the case law governing automobile searches. Each of these arguments is without merit.

1. The State and its *amici* claim that it is reasonable to assume that a passenger's belongings may contain evidence of criminal activity when there are grounds to suspect a driver of committing a crime. They say that drivers and passengers are likely to be engaged in a common purpose and, therefore, a passenger is likely to be engaging in the same illegal activity as the driver. *See, e.g.*, Pet. Br. at 31 (stating that it is "obvious[]" that drivers and passengers have a "common purpose"); U.S. Br. at 12 ("[i]t is not unreasonable to *assume* that [drivers and passengers] *may*

. . . be engaged in other common activity associated with . . . travel" (emphasis added)). Similarly, they suggest that it is reasonable to *assume* that the driver's contraband *may* be concealed in the passenger's belongings. *See* U.S. Br. at 6 ("it is reasonable to assume that a passenger's purse, bag or other container . . . is as likely a receptacle as any other compartment or container in the automobile"). In effect, the State and Solicitor General attempt to revive the argument that "mere presence" gives rise to probable cause.

But the State's underlying assumptions are far from reasonable. The State and its *amici* fail to point to any evidence or statistics of any sort supporting the notions that drivers and passengers share a "common purpose," or that drivers are likely to conceal contraband in the belongings of their passengers. Such notions are no more than generalizations which are insufficient to justify a departure from the requirement of specific and individualized suspicion. *See Ybarra,* 444 U.S. at 91; *Di Re,* 332 U.S. at 587; *Von Raab*, 489 U.S. at 684 (Scalia, J., dissenting) (mere "generalization[s]" should not be permitted to influence this Court's Fourth Amendment jurisprudence).

As discussed above, this Court has previously rejected similar assumptions as "farfetched." *Di Re,* 332 U.S. at 593. *See also Ybarra,* 444 U.S. at 91; *Sibron*, 392 U.S. at 62. And rightly so. For example, suppose that we knew that David Young was a fan of the Washington Redskins football team. Even the State must agree that no assumptions can be made regarding Houghton's allegiance to the Redskins. She might be a fan of the Dallas Cowboys and detest the Redskins, notwithstanding the fact that she is riding in the car with Young. Similarly, information indicating that Young is a drug user does not indicate that the

passengers in the car are drug users. Permitting this type of inference does away with the specific and individualized suspicion requirement of the Fourth Amendment.

2. The State also contends that the probable cause requirement is unworkable in the context of automobile container searches. Not only are officers perfectly capable of making probable cause determinations before conducting searches, but they do so each and every day. Thus, the State's contention that requiring officers to search only upon probable cause is unworkable is faulty. This case is a perfect illustration. Here, the officer *knew* that the purse was Houghton's, and had no reason to think that she possessed drugs in her purse, or that Young put drugs there. What, then, is unworkable about prohibiting this search, or others like it, where probable cause is lacking?

"On the spot" determinations are part and parcel of being a police officer. The police make probable cause determinations routinely and in a variety of situations—including when they search or seize an item in "plain view," *see, e.g., Hicks*, 480 U.S 321, and when they search a specific container in a car, but not the rest of the vehicle, *see, e.g., Acevedo*, 500 U.S. 565. To argue that the very same determination is now "unworkable" in the context of a search of passenger's belongings is not plausible.

Lower courts, which would have to deal with the alleged workability problem, have not found such a problem exists. Numerous cases involving searches on fixed premises have required the police to distinguish between a search of a suspect's belongings, for which probable cause exists, and a search of a visitor's belongings for which there is no probable cause. *See, e.g., United States v. Robertson*, 833 F. 2d 777, 785 (9th Cir. 1987) (search of visitor's

backpack violated Fourth Amendment because government's rationale would permit search of objects "in the absence of any suspicion whatsoever that they contain anything in which the police have a legitimate interest in viewing"); *Hawkins v. Georgia*, 300 S.E.2d 224 (Ga. Ct. App. 1983) (search for drugs could not extend to search of purse of visitor); *Childers v. Georgia*, 281 S.E.2d 349, 351 (Ga. Ct. App. 1981) (search for marijuana could not extend to defendant's purse where there "was no evidence to indicate that [she] was other than a mere visitor"); *Hawaii v. Przeradski*, 677 P.2d 471 (Haw. Ct. App. 1984) (search for evidence of fraudulent investment scheme did not permit search of visitor's beach bag).

It might be *easier* for law enforcement if the probable cause requirement of the Fourth Amendment were abandoned, but the requirement is not *unworkable*. *Cf. Maryland v. Wilson*, 519 U.S. 408, 423-24, (1997) (Kennedy, J., dissenting) ("It does no disservice to police officers . . . to insist upon exercise of reasoned judgment. . . . Liberty comes not from officials by grace but from the Constitution by right."). In any event, "the mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment." *Mincey v. Arizona*, 437 U.S. 385, 393 (1978).

3. The State and its *amici*, citing to *New York v. Belton*, 453 U.S. 454 (1981), also argue that it would be anomalous if officers were not permitted to search Houghton's purse. This argument is unfounded.

Belton applied the search incident to arrest exception to automobiles, and permitted the search of a person's jacket who had been arrested. It did not involve the search of

bystanders or their things.[4] The *Belton* Court announced an extremely narrow exception to the requirements of an automobile search. The exception, that probable cause is not required for a search of the passenger compartment incident to arrest, was created "because of the need 'to remove any weapons that [the arrestee] might seek to use in order to resist arrest or effect his escape' and the need to prevent the concealment or destruction of evidence." *Id.* at 457 (alteration in original) (*quoting Chimel v. California*, 395 U.S. 752, 763 (1969)). Those concerns are triggered by an arrest, not by a search unaccompanied by an arrest. This is so because safety concerns are heightened when an arrest is made. *See id.* at 457. Accordingly, it is not anomalous that *Belton*, a case dealing with the safety concerns present during a search incident to arrest, permits a broader search than do cases involving searches in the absence of an arrest.

Similarly, there is no tension between the Wyoming Supreme Court's decision and *Wilson*, 519 U.S. at 415. There, the Court stated that officers making traffic stops may order passengers to get out of the car pending completion of the stop. *Id.* The safety concerns animating the Court in *Wilson* led to the conclusion that the "additional intrusion on the passenger [of getting out of the car] is minimal." *Id.* at 415. This is so because the passenger is already stopped; therefore, the additional measure of stepping out of the car was deemed a minor intrusion. *Id.* Here, however, there was a significant invasion of Houghton's privacy. In addition to being ordered out of the car, Houghton had her personal belongings searched. Because the additional intrusion here is not "minimal," *Wilson* is not analogous.

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[4] This Court has never extended *Belton* to encompass articles belonging to persons other than the arrestee.

A true anomaly would be created if this Court reversed the decision of the Supreme Court of Wyoming. This Court held in *Di Re* that an officer cannot search a passenger without probable cause specific to the passenger. Why then, should an officer be permitted to search a passenger's purse? Why should there be a difference between the person and her intimate belongings? The underlying rationale of *Di Re* and other seminal probable cause decisions of this Court provides the answers to these questions: searches cannot be conducted of a person or her personal belongings where probable cause specific to the person or the belongings is lacking.

CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court of Wyoming should be affirmed.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

The STATE OF WYOMING,

Petitioner,

v.

SANDRA HOUGHTON

Respondent.

On Writ of Certiorari to the Supreme Court of the State of Wyoming

BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS IN SUPPORT OF PETITIONER

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ARGUMENT:

I. The three part "notice" test adopted by the Supreme Court of Wyoming for the search of a motor vehicle passenger's personal effects is confusing and unworkable. When a law enforcement officer has lawfully stopped a vehicle, and there is probable cause to search for contraband, it is reasonable under the Fourth Amendment of the U.S. Constitution for the officer to search the vehicle, including any containers or items left in the vehicle that could contain the contraband, without requiring the officer to inquire into or accept independent property claims by either the driver or a passenger. 8

A. Because of the diminished expectation of privacy that occupants of a motor vehicle possess, it is not unreasonable to search personal property left in the vehicle by either the driver or a passenger, during a lawful search. It is well settled that once a law enforcement officer has probable cause to search an automobile, he or she can search all containers within the passenger compartment. 8

B. The Supreme Court of Wyoming's novel application of the "notice" test, usually applicable to searches of fixed

premises, to a search of an automobile, fails to recognize that there is a constitutionally distinguishable difference between the search of a vehicle and a search of fixed premises. 12

C. Applying the "notice" test to situations where law enforcement officers have lawfully stopped an automobile and have probable cause to search the vehicle will unnecessarily create confusing situations whereby law enforcement officers try to decide, based on assertions by automobile occupants, what items left in the automobile can reasonably be searched. The "notice" test is confusing, unworkable, and thus unreasonable for law enforcement searches for contraband in automobiles. Law enforcement officers need clear and reasonable guidelines in situations involving automobile searches. 15

II. As an alternative ground, the Court should uphold the search of the Respondent's purse, as a search of a vehicular passenger compartment incident to an arrest, where there was probable cause to arrest the driver of this vehicle for possession of controlled substances. The crucial element conferring upon law enforcement officers the right to conduct a search incident to an arrest is probable cause to arrest, not the actual arrest itself which may occur after the search. 21

A. As long as a law enforcement officer has probable cause to arrest, it does not matter whether the arrest occurs after or before the search incident to an arrest. 21

B. When conducting a search incident to an arrest, the law enforcement officer may validly search the belongings of a passenger, as long as the belongings are in the passenger compartment of the vehicle when the search is made. 23

C. Law enforcement officer safety is a major reason for allowing searches of persons and passenger compartments incident to an arrest. Respondent's purse could have concealed a gun, as well as contraband, and therefore the search was reasonable under the Fourth Amendment. . 25

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus curiae National Association of Police Organizations, Inc. (hereafter "NAPO"), submits this brief in support of the Petitioner, the State of Wyoming, for the reversal of the judgment of the Supreme Court of the State of Wyoming, which had reversed the trial court's denial of Respondent's motion to suppress physical evidence seized from an automobile in which she was a passenger.[1]

NAPO is a national non-profit organization, representing state and local law enforcement officers in the United States. It is a coalition of police associations and unions that serves to advance the interests and legal rights of law enforcement officers through advocacy, education, and legislation. NAPO represents 4,000 law enforcement organizations, with over 220,000 sworn law enforcement officers (including police officers, deputy sheriffs, state troopers, highway patrol officers, and traffic enforcement personnel), 3,000 retired officers, and more than 100,000 citizens dedicated to fair and effective crime control and law enforcement. NAPO's affiliate, the National Law Enforcement Officers' Rights Center of the Police Education and Research Project, advocates the fundamental due process and workplace safety rights of officers.

NAPO's members have a significant interest in the important issues of law before this Court and the impact of the Court's decision on law enforcement. First, this case will delineate the extent to which law enforcement officers may conduct "probable cause" searches of automobile passenger compartments, and, specifically, the limitations placed on the scope of such searches. As one of the largest police advocacy organizations, NAPO is concerned with the ability of police officers to conduct effective and thorough searches whenever they have probable cause to search a vehicle for evidence of criminal activity, free of

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[1]Pursuant to Supreme Court Rule 37.6, no counsel for any party in this case authored this *amicus curiae* brief in whole or in part, and no person or entity, other than the *amicus curiae* and its members, made a monetary contribution to the preparation or submission of the brief.

unreasonable, confusing, and unworkable restrictions on what may be searched within the passenger compartment.

Second, this case may decide the restrictions to be placed on searches of a passenger compartment when there is probable cause to arrest, including the strict limitations on what items or containers may be searched, even if they are within the passenger compartment and therefore presumed by law to be within the "reach of the arrestee", the legal principle sanctioned by this Court. The outcome of this case may also bear on whether law enforcement officers can fully protect themselves by conducting searches for weapons upon stopping a motor vehicle, when they have probable cause to both arrest an occupant and conduct a search (the probable cause arising either before or after the stop). NAPO is vitally concerned with the safety of law enforcement officers. Stopping a motor vehicle constitutes one of the least predictable and potentially most dangerous duties of a law enforcement officer.

In summary, NAPO seeks to provide the Court with meaningful insight into the perspective of the police profession, including the absolute need for clarity on the permissible scope of an automobile passenger compartment search.

WRITTEN CONSENT OF THE PARTIES

NAPO has received the written consents of the Petitioner State of Wyoming (from the Deputy Attorney General) and of the Respondent Sandra Houghton (from the State Public Defender), pursuant to Supreme Court Rule 37.3(a). These letters of consent have been filed with the Clerk of the Court, as required by the rule.

STATEMENT OF THE CASE

The *amicus curiae* adopts the factual statement in the State of Wyoming's July 27, 1998, petition for a writ of certiorari. What follows is a shorter narrative of the facts and proceedings.

Early on the morning of July 23, 1995, Wyoming Highway Patrol Officer Delane Baldwin stopped an automobile for speeding and a faulty brake light on an interstate highway. The car contained three occupants, the driver, David Young, and two passengers in the front seat, specifically Young's girlfriend and the Respondent, Sandra Houghton.

While asking for Young's driver's license and other papers, the officer noticed a hypodermic syringe in Young's shirt pocket. He told Young that he had seen the syringe and that he was going to retrieve gloves from the patrol car. Upon returning, the officer ordered Young out of the car and told him to place the syringe on the hood. Another officer kept an eye on the occupants. The officer asked what the syringe was for, and Young responded that he had used the syringe to take drugs. At that point, all the passengers were ordered out of the vehicle, asked to identify themselves, and patted-down for weapons (none were found). The Respondent gave a false name, "Sandra Jones".

Officer Baldwin then began a search of the passenger compartment for drug-related contraband, based on Young's admission that he had used the syringe to inject himself with drugs, constituting probable cause for the search. The officer found a closed lady's purse on the middle of the back seat. He removed a wallet from the purse and located the Respondent's driver's license, identifying her as Sandra Houghton, not Sandra Jones. When the officer asked her about this, she replied, it was "in case things went bad." Around this time, although unclear as to exactly when, the respondent admitted that the purse was hers.

At that point, the officer removed a brown bag from the purse, in which he found a syringe containing approximately 60

cc's of a liquid, which subsequently proved to be methamphetamine (based on an on-site test). He also found more syringes, razor blades and other drug paraphernalia inside the bag. Respondent Houghton apparently denied ownership of these items and others subsequently pulled from her purse. Looking at the Respondent's arms, the officer found fresh needle track marks. The officer then arrested the Respondent. Subsequently, he found a smaller black bag containing more syringes and a vial, which contained more methamphetamine and other drug paraphernalia. Ironically, Young was not arrested, because the small amount of residue left in his syringe would have been more difficult to test for and there was much more evidence against the Respondent.

Respondent Houghton was charged with possession of a controlled substance, a felony. She moved to suppress all evidence seized. After a hearing, the trial court denied her motion and ruled that when an officer has probable cause to believe that contraband is somewhere in a car, as here, he may search the car and any containers within the car which could hold the contraband, including a passenger's purse. Therefore, the evidence was admitted at trial, and she was convicted.

Houghton appealed to the Wyoming Supreme Court on the ground that the search violated her reasonable expectation of privacy in her personal belongings, absent specific probable cause to believe that contraband was in her purse.

On April 3, 1998, the Wyoming Supreme Court rendered an opinion, holding that the search of Respondent's purse violated the Fourth and Fourteenth Amendments of the U.S. Constitution and excluded the evidence seized from it. *Houghton v. State of Wyoming*, 956 P.2d 363 (Wyo. 1998). In its analysis, the court changed the focus of this case from an automobile search to a search of a guest and his or her personal effects on fixed premises. The Court relied upon cases, such as *Ybarra v. Illinois*, 444 U.S. 85, 100 S.Ct. 338 (1979), which analyzed the scope of a search warrant in a residential or commercial building involving a guest

and the guest's personal items in that building.[2] The court adopted a "notice" test, limiting the scope of a permissible search, once a law enforcement officer becomes aware that a container in a vehicle belongs to a passenger. The court concluded, as follows:

> Generally, once probable cause is established to search a vehicle, an officer is entitled to search all containers therein which may contain the object of the search. However, if the officer knows or should know that a container is the personal effect of a passenger who is not suspected of criminal activity, then the container is outside the scope of the search unless someone had the opportunity to conceal the contraband within the personal effect to avoid detection. Here, the officers knew or should have known that the purse did not belong to the driver, but to one of the passengers. Since there was no probable cause to search the passengers' personal effects and no reason to believe that contraband had been placed within the purse, the search was unreasonable and in violation of the Fourth Amendment right to be free from such governmental intrusion. We, therefore, reverse the district court's denial of Houghton's motion to suppress....

956 P.2d at 372.

Two of the five Justices of the Wyoming Supreme Court dissented from this ruling. A petition for a rehearing was denied on April 28, 1998. The State of Wyoming then petitioned the U.S. Supreme Court for a writ of certiorari on July 27, 1998. The Court granted review on September 29, 1998.

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[2]There, the Court ruled that a warrant limited to a search of a tavern and the bartender did not permit a pat-down search of a patron sitting at the bar, since that was beyond the scope of the warrant.

SUMMARY OF THE ARGUMENT

Based on past Supreme Court cases, the automobile exception (to the Fourth Amendment's warrant requirement) allows law enforcement officers having probable cause to believe that contraband may be found in an automobile, to conduct a search of the passenger compartment and all containers *located* therein which may contain the objective of the search, irrespective of *ownership* of the containers. Occupants of automobiles (both drivers and passengers) possess a diminished expectation of privacy in any container, including a woman's purse, left behind by an owner exiting the vehicle. The Wyoming Supreme Court has created a major exception to the principles expounded in this Court's *Carroll*, *Ross*, and *Acevedo* cases, *infra*. It has significantly limited the scope of the search of containers in an automobile to exclude containers or other property not belonging to the driver, by applying a "notice of ownership" test, sometimes applied in cases involving fixed premises but rarely, if ever, applied in automobile cases.

Wyoming's three part "notice" test is confusing and unworkable during the course of lawful searches for contraband in passenger compartments of automobiles. This test does not provide clear and viable guidelines; instead, it requires law enforcement officers to make difficult, if not impossible, determinations concerning which containers and items in a vehicle accurately belong to which person and therefore can be lawfully searched. It will enable those who are committing (or have committed) criminal offenses to easily evade a lawful and reasonable search, and it will curtail effective law enforcement. There is much opportunity for drivers and passengers inside a moving vehicle, either before or during a traffic stop, to transfer an item into a container, to transfer contraband from one container to another container without being detected, or to develop a story of who should claim ownership of a container. In fact, law enforcement officers routinely uncover such efforts when conducting searches for illegal drugs, weapons, and other contraband. The "notice" test thus creates a loophole and will encourage these efforts. Therefore, it is reasonable for a law

enforcement officer having probable cause to search any container found in an automobile's passenger compartment, which conceivably could contain the object of the search, unconstrained by claims of ownership.

Alternatively, whenever a law enforcement officer has probable cause to arrest a driver, which existed in this case, the officer may conduct a search of the passenger compartment, presumed by law to be the area "within the reach" of the individual arrested or to be arrested. The fact that an arrest had not occurred before the search in this case is irrelevant, as long as the officer initially had probable cause to arrest the driver. This is because there is considerable leeway granted as to the timing of an arrest. *Amicus curiae* could find no appellate decisions requiring that containers found within the passenger compartment be the personal property of the individual (usually the driver), as to whom there is probable cause to arrest, before those containers could be searched. The rationale for such a search is to find any weapon which could be used against the officer and prevent the destruction of evidence. The ownership of a container concealing a weapon or evidence is irrelevant to these purposes of officer safety and preventing the destruction of evidence.

Therefore, the three part "notice" test devised by the Wyoming Supreme Court is not required by the Fourth Amendment during lawful searches of passenger compartments, and the Court should reverse that court's decision in this case.

ARGUMENT

I. The three part "notice" test adopted by the Supreme Court of Wyoming for the search of a motor vehicle passenger's personal effects is confusing and unworkable. When a law enforcement officer has lawfully stopped a vehicle, and there is probable cause to search for contraband, it is reasonable under the Fourth Amendment of the U.S. Constitution for the officer to search the vehicle, including any containers or items left in the vehicle that could contain the contraband, without requiring the officer to inquire into or accept independent property claims by either the driver or a passenger.

A. Because of the diminished expectation of privacy that occupants of a motor vehicle possess, it is not unreasonable to search personal property left in the vehicle by either the driver or a passenger, during a lawful search. It is well settled that once a law enforcement officer has probable cause to search an automobile, he or she can search all containers within the passenger compartment.

Under the Fourth Amendment, the reasonableness of a search of an automobile and its driver depends on a balancing between the individual's right of privacy and the public's interest in effective law enforcement. In *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280 (1925), this Court established the automobile exception to the general requirement that a warrant be obtained to conduct a search. The Court held that a warrantless search of an automobile, based upon probable cause, did not contravene the Warrant Clause of the Fourth Amendment, in light of an exigency arising out of the likely disappearance of the vehicle. *Id.* at 158. Thus, under *Carroll*, it is permissible for police officers to search an automobile without a warrant when they have probable cause (in other words, reasonable grounds) to believe the vehicle contains weapons or other evidence of a crime. The existence of probable cause to

conduct a search for drugs and drug-related contraband is not disputed in the instant case.

In *Carroll*, this Court observed a major difference between searches involving fixed premises, such as dwellings or other buildings, and searches involving movable structures, such as vessels, wagons, and carriages. 267 U.S. at 151, 45 S.Ct. at 284. Thus, as far back as 1925, the Court recognized a fundamental difference between warrantless searches involving movable vessels (i.e. automobiles) and searches involving fixed premises. Therefore, treating the two exactly the same, as the Wyoming Supreme Court did in the present case by adopting a "notice" test developed for fixed premises, contravenes established precedent and ignores the distinction between automobiles and buildings.

When a passenger in an automobile that is lawfully stopped and searched by the police leaves personal items in the car after he or she is asked to exit the vehicle, that passenger's expectation of privacy in the item left in the automobile is diminished. *Rakas v. Illinois*, 439 U.S. 128, 153-154, 99 S.Ct. 421, 436 (1978). As stated by Justice Powell, in concurrence:

> Nothing is better established in Fourth Amendment jurisprudence than the distinction between one's expectation of privacy in an automobile and one's expectation when in other locations.
>
> . . .
>
> It is unrealistic ... to suggest that these passengers had any reasonable expectation that the car ... would not be searched after they were lawfully stopped and made to get out. The minimal privacy that existed simply is not comparable to that ... of an individual in his place of abode, [citation omitted]; of one who secludes himself in a telephone booth, [citation omitted]; or of the traveler who secures his belongings in a locked suitcase or footlocker. [citation omitted].

439 U.S. at 153-55, 99 S.Ct. at 435-36. As Justice Powell

observed, there are sound reasons for this distinction. Automobiles operate on public streets; they are serviced in public places; they stop frequently; they are usually parked in public places; their interiors are highly visible; and they are subject to extensive regulation and inspection. *Id.* at 154, 99 S.Ct. at 436, n.2.

In the present case, Houghton's act of leaving the purse in the vehicle, when she exited it, demonstrated an "absence of a reasonable expectation of privacy in that purse."[3] *Houghton*, 957 P.2d 363, 373 (dissent Golden, J., with whom Thomas, J. joins). Law enforcement officers will have a difficult, if not impossible, endeavor accurately determining what containers they can lawfully search in an automobile, if a passenger, who leaves behind property in an automobile when he or she exits it, can successfully claim that law enforcement officers had no right to search this property under the Fourth Amendment.

In *United States v. Ross*, 456 U.S. 798, 102 S.Ct. 2157 (1982), the issue presented was:

> the extent to which police officers--who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed somewhere within it--may conduct a probing search of compartments and containers within the vehicle whose contents are not in plain view.

456 U.S. at 800, 102 S.Ct. at 2160. The Court held that the scope of a warrantless search of a vehicle, predicated on the automobile exception, is:

> no broader and no narrower than a magistrate could legitimately authorize by warrant. If probable cause

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[3]The Court can take judicial notice that in American society women almost always keep their purses (or pocketbooks) on them, usually on their shoulders, in their hands, or between their arms, including whenever they exit from an automobile.

> justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.

456 U.S. at 825, 102 S.Ct. at 2173. The Court further stated:

> The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found.

456 U.S. at 824, 102 S.Ct. at 2172.

In *California v. Acevedo*, 500 U.S. 565, 111 S.Ct. 1982, 114 L.Ed.2d 619 (1991), this Court eliminated the warrant requirement for containers where police have probable cause specific to the container, but not probable cause to search the vehicle generally. Noting the confusion created by the "dual regimes for automobiles searches under Chadwick/Sanders and Ross," the Court interpreted *Carroll* as providing one rule to govern all automobile searches. *Id.* at 580, S.Ct. at 1991. Thus, the Court held that the police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained. *Id.* The Court went further to explain that the interpretation of the *Carroll* doctrine set forth in *Ross* "now applies to all searches of containers found in an automobile. In other words, the police may search without a warrant if their search is supported by probable cause." *Id.* at 579, S.Ct. at 1990.

Thus, based on *Carroll, Ross,* and *Acevedo*, the automobile exception to the Fourth Amendment's warrant requirement allows a law enforcement officer, who has probable cause to believe that the vehicle contains contraband, to search the entire vehicle and all containers therein which may contain the object of the search.

B. The Supreme Court of Wyoming's novel application of the "notice" test, usually applicable to searches of fixed premises, to a search of an automobile, fails to recognize that there is a constitutionally distinguishable difference between the search of a vehicle and a search of fixed premises.

The Wyoming Supreme Court has created a major sub-exception to the automobile exception. In applying the "notice" test to the warrantless search of an automobile, the court has rejected the crucial principle underpinning the automobile exception, by significantly limiting the scope of the search of an automobile to exclude property not belonging to the driver.

Under the general "notice" test, law enforcement officers may assume that all containers on the premises may be searched, unless the officer knows or should know that a container belongs to someone not covered in the warrant or by probable cause. However, if the officer knows or should know the container belongs to a visitor on the property, he or she may search the container if there is independent probable cause to do so (even if the item being searched for, belonging to someone else, could be concealed in the container), or if someone on the premises had an opportunity to hide or conceal contraband in the container immediately prior to the search. *State v. Thomas*, 818 S.W.2d 350 (Tenn. Crim. App. 1991).

It is significant that the *Thomas* case, the key case relied upon by the Wyoming court for the "notice" test, involved a premises search. There, the search warrant was issued for a residence. The court held that the search of the visitor's purse was unreasonable because there was no opportunity for the suspect to place the cocaine in the visitor's purse, because of the fact that both the suspect and visitor were asleep at the time the officers arrived. The court stated:

> [P]olice cannot realistically be expected to avoid searching the property of a mere visitor to the

> premises unless they are aware of its ownership. Absent a requirement of such awareness, the effective execution of a warrant to search a place would be impossible since the police could never be sure that a plausible repository for items named in the warrant belongs to a resident, and hence is searchable, or to a non-resident, and hence is not searchable. Because of this, without notice of some sort of the ownership of a belonging, the police are entitled to assume that all objects within the premises lawfully subject to search under a warrant are a part of those premises for the purpose of executing the warrant....

Id. at 360 (quoting *State v. Naborro*, 525 P.2d 573 (Haw. 1974)).

In applying the "notice" test to the facts of the present case, the Wyoming Supreme Court concluded that the Highway Patrol officer knew or should have known that the purse was not the possession or in the control of the male driver, but was the personal effect of one of the non-suspect female passengers. *Houghton*, 956 P.2d at 370. The court then concluded that, under the "notice" test, the purse was not within the scope of the search of the automobile unless the officer had reason to believe that "someone within the premises has had the opportunity to conceal the contraband within the personal effects of the visitor immediately prior to the execution of the ... [search]." *Id.* (quoting *Thomas*, 818 S.W.2d at 359). Because the officer testified that he did not observe any unusual movements within Young's car, the Wyoming court concluded that there was no effort and thus no opportunity to conceal drugs or drug-related paraphernalia in Houghton's purse. Therefore, the search of the purse was judged not to be within the permissible scope of the search for contraband in the possession or control of the driver. *Id.* at 371.

The Wyoming Supreme Court's expansion of the "notice" test to searches involving automobiles ignores the long established constitutional differences between fixed premises searches and automobile searches and has never been sanctioned by this Court

or any other court in automobile searches. In *Rakas*, this Court stated "[w]e have on numerous occasions pointed out that cars are not to be treated identically with houses or apartments for Fourth Amendment purposes." *Id.* at 148, S.Ct. at 433. In *United States v. Kralik*, 611 F.2d 343 (10th Cir. 1979), cert. denied, 445 U.S. 953, 100 S.Ct. 1603, 63 L.Ed.2d 788 (1980), the court stated, "We do not equate the search of a person unnamed in a warrant with the search of a described automobile for a specified item. A person is not an inanimate container, an automobile is." 611 F.2d at 345.

Thus, by holding that probable cause to search a car generally for contraband is insufficient to search the personal belongings of a passenger for whom there is no individualized probable cause, the Wyoming Supreme Court has, in effect, repudiated the automobile exception doctrine developed in *Carroll, Ross,* and *Acevedo*. It has changed the scope of such a search from a "location" search to a "claim of ownership" search. By failing to acknowledge the difference between automobile searches and other fixed premises searches and by applying the "notice" test, the court has misconstrued and misapplied Fourth Amendment case law.

In summary, applying the "notice" test to situations involving automobile searches would be very alarming, because the driver can easily conceal drugs, weapons, or other incriminating evidence in the purse, bag, or container belonging to the passenger. When law enforcement officers stop a vehicle and have probable cause to search the vehicle, the officers normally have authority to search any purse, bag, or container in the automobile, except now in Wyoming. And this search authority should continue, even if the officer is put on "notice" that a container belongs to a passenger, because of the opportunity of the driver or the passenger to conceal someone else's items in a purse, bag, or another container.

C. Applying the "notice" test to situations where law enforcement officers have lawfully stopped an automobile and have probable cause to search the vehicle will unnecessarily create confusing situations whereby law enforcement officers try to decide, based on assertions by automobile occupants, what items left in the automobile can reasonably be searched. The "notice" test is confusing, unworkable, and thus unreasonable for law enforcement searches for contraband in automobiles. Law enforcement officers need clear and reasonable guidelines in situations involving automobile searches.

In concluding that the *Carroll* doctrine provided one rule to govern all automobile searches and that, as a result, the police could search an automobile and the containers within it where they had probable cause to believe evidence was contained, the Court noted "the virtue of providing 'clear and unequivocal' guidelines to the law enforcement profession." *Acevedo*, 500 U.S. at 576, 111 S.Ct. at 1990. Police need clear guidelines by which they can gauge and regulate their conduct rather than trying to follow a complex set of rules dependent "upon particular facts regarding the time, location and manner of highway stops." *State v. Brown*, 721 P.2d 1357 (Or. Ct. App. 1986). In *Acevedo*, the Court explained the rationale for this principle:

> The line between probable cause to search a vehicle and probable cause to search a package in that vehicle is not always clear .... Recognizing that under Carroll, the "entire vehicle itself ... could be searched without a warrant," we concluded that "prohibiting police from opening immediately a container in which the object of the search is most likely to be found and instead forcing them first to comb the entire vehicle would actually exacerbate the intrusion on privacy interests." [Citation omitted.] At the moment when officers stop an automobile, it may be less than clear

> whether they suspect with a high degree of certainty that the vehicle contains drugs in a bag or simply contains drugs. If the police know that they may open a bag only if they are actually searching the entire car, they may search more extensively than they otherwise would in order to establish the general probable cause required by Ross.

500 U.S. at 574-75, 111 S.Ct. at 1988.

The range of variables in fact situations in search and seizure cases are many. Thus, "[a] single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." *New York v. Belton*, 453 U.S. 454, 101 S.Ct 2860, 69 L.Ed.2d 768 (1981) (quoting from *Dunaway v. New York*, 442 U.S. 200, 213-214). Thus, under the Fourth Amendment, law enforcement officers need rules that make it possible to reach a correct determination as to whether an invasion of privacy is justified in the interest of law enforcement.

> Fourth Amendment doctrine ... is primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged. A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be "literally impossible of application by the officer in the field."

LaFave, *"Case-By-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma,* 1974 S.CT. REV. 127, 141.

Application of Wyoming's novel "notice" test to automobile

searches will not give law enforcement officers clear guidelines in conducting such searches. To the contrary, *amicus curiae* NAPO firmly believes that the difficulties, uncertainties, and consequent confusion existing prior to the *Ross* and *Acevedo* decisions would arise again if this Court adopts Wyoming's "notice" test. Adoption of this test would force law enforcement officers, who have lawfully stopped an automobile and have probable cause to search the passenger compartment and any containers located therein, to make quick independent and accurate judgements regarding claims of ownership by either the driver or a passenger of property located inside the vehicle, including ownership of containers and their contents.

The "notice" test creates a loophole to the lawful search of an automobile, by allowing the passenger (or at other times the driver) to claim property which does not belong to him or her. What is a law enforcement officer supposed to do when the officer stops a vehicle and has probable cause to search the vehicle and the containers therein, but the passenger claims ownership of a bag situated on the back seat? The officer in this situation is faced with the following questions, among others: Whose bag is it? Is the passenger telling the truth? Can the officer still lawfully search the bag? If the driver is a male and the passenger a female, must the officer make a determination as to whether a "purse-like" bag is more likely to belong to a male or a female, before searching it?[4]

In *State v. Fix*, 730 P.2d 601 (Or. Ct. App. 1986), the police investigated a complaint that two men armed with pistols had threatened another man. An officer stopped a blue pickup truck which matched the suspect vehicle's description and was occupied by two males and two females. During the course of searching the

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[4]In today's society, one could easily argue that it is not unreasonable to conclude that a male would own a "purse-like" bag, especially someone hoping to evade a law enforcement search for contraband. Also, European men have carried special men's purses since the 1970s. Also, both men and women have found it fashionable to use "fanny packs", bags that are strapped around one's waist.

vehicle, the officer found a purse on the passenger side floorboard, which contained a loaded .38 special pistol. The court held that the officer had probable cause to believe that the two male passengers had committed a crime and that evidence of that crime (the guns) would be in the truck. *Id.* at 604. In addition, the court concluded that the search of the purse was lawful because the purse was large enough to contain a gun. *Id.* If the Oregon court had followed the Wyoming "notice" test, the search of the purse would have been unlawful, because the officer should have known that the purse did not belong to either male passenger.

In *State v. Moore*, 619 So.2d 376 (Fla. Dist. Ct. App. 1993), a police officer stopped a vehicle that contained a male driver and a female passenger. During the course of a lawful search of the vehicle, the officer found three "purse-like" bags on the front floorboard of the vehicle. Upon opening the bags, the officer discovered contraband in all three bags, which belonged to the female passenger. The court upheld the officer's search of the vehicle and the passenger's purse. *Id.* at 377. Under the Wyoming "notice" test, it is uncertain whether the officer would have been allowed under the Fourth Amendment to search the "purse-like" bags, because conceivably either the male driver or the female passenger could have owned the bags.

In *People v. McMillon*, 892 P.2d 879 (Colo. 1995), a police officer lawfully stopped a vehicle. The driver and passenger were both females. The officer noticed a syringe between the driver's seat and the console between the seats. During a search of the vehicle, the officer noticed two purses, one lying on the passenger seat and the other lying on the floorboard of the front passenger area. The officer searched the purse lying on the seat and found drugs inside of it. The officer testified that he did not have any reason to know which purse belonged to which person. *Id.* at 881. The Colorado Supreme Court held that the officer had probable cause to perform a search of the car for contraband, and that neither *Ross* nor *Acevedo* required a separate probable cause determination for the passenger's purse. *Id.* at 883. The Court stated, "The search of the purse was proper irrespective of whether the officer

knew or should have known that it belonged to McMillon". *Id.*

If the "notice" test was the standard applied in Colorado for all automobile searches, it is unclear what the officer in *McMillon* would and could have done. There were two female occupants in the car, and the officer found two purses inside the automobile. Which purse is the officer allowed to search under the automobile exception? How does the officer decide which purse belongs to which female? Should he ask the women which purse belongs to which person? Will they tell the truth? What if the passenger claims to own both purses? What does the officer do then? Does the officer give up and not conduct a search, when faced with either a possible exclusion of the evidence in a future prosecution because of this confusion or a possible § 1983 Federal civil rights action, or both; or does the officer carry out his or her duty to enforce the laws and conduct a search based on probable cause, disregarding these risks?

The confusion is manifest. The notice test is confusing and unworkable in the context of automobile searches and is not mandated by the Fourth Amendment's reasonableness requirement.

In the present case, the Supreme Court of Wyoming determined that there was no reason to believe that drugs could have been place in Houghton's purse prior to the stop.

> The officer testified that he used his lights to illuminate the inside of the car at all times, and that there were no "unusual movements or sudden movements within the vehicle itself." He also testified that the occupants were constantly under his observation or that of another officer. The officer's testimony clearly established that there was no reason to believe the object of the search was placed in the purse prior to the stop, no probable cause to believe that either woman was carrying drugs, and no reason to believe that the purse belonged to Young.

956 P.2d at 371.

This conclusion utterly disregards the ease with which items can be concealed, especially if a purse or container had been in the front seat, or if the driver had asked the passenger to conceal the contraband beforehand, as is a common practice in these cases. The Wyoming court below payed short shrift to the possibility that the Respondent may have concealed the driver's contraband in her purse. As the dissent points out:

> Common sense tells us that the transfer of small containers of controlled substances between an automobile's occupants can occur swiftly, silently, effortlessly, and without detection by even the keenest observer.

956 P.2d at 373 (Dissent, Golden, J., with whom Thomas, J., joins). In fact, as most law enforcement officers would confirm, it is very common for automobile drivers who possess a weapon or an illegal substance to ask an occupant in the vehicle to conceal or hide it at any time--before, during, or just after a traffic stop.

In conclusion, the three part "notice" test applied to vehicle searches is confusing, unreasonable, and unworkable.

First, if this Court affirms the Wyoming decision, then many drivers committing criminal acts will easily be able to evade searches by having a passenger present in a car, by concealing items in purses or other containers, and by having the passenger lay claim to such containers prior to a search. It will thus enable those against whom there is probable cause to easily evade a lawful and reasonable search, seriously curtailing effective law enforcement.

Second, this test should not be applied to searches pursuant to the automobile exception, because it requires law enforcement officers to make impossible determinations concerning which items in a vehicle really belong to which person and therefore can be plausibly searched. Under the precedents of this Court and in view

of the public interest in effective law enforcement, it is reasonable for the law enforcement officer to search any container which conceivably could contain the object of the search. In summary, the decision by the Wyoming Supreme Court is not compelled by the Fourth Amendment.

II. As an alternative ground, the Court should uphold the search of the Respondent's purse, as a search of a vehicular passenger compartment incident to an arrest, where there was probable cause to arrest the driver of this vehicle for possession of controlled substances. The crucial element conferring upon law enforcement officers the right to conduct a search incident to an arrest is probable cause to arrest, not the actual arrest itself which may occur after the search.

A. As long as a law enforcement officer has probable cause to arrest, it does not matter whether the arrest occurs after or before the search incident to an arrest.

Once probable cause to arrest has been established, the authority to conduct a search incident to a lawful arrest has been consistently upheld, in order to secure officer safety or prevent the destruction or concealment of evidence. *Chimel v. California,* 395 U.S. 752, 89 S.Ct. 2034 (1969).

It is the probable cause to arrest, not the actual arrest itself, that justifies the search incident to arrest. Consequently, the timing of the actual arrest has not been considered to be significant, and the courts often have granted law enforcement officers considerable leeway in deciding upon the best procedure of arrest. In *Rawlings v. Kentucky*, 448 U.S. 98, 100 S.Ct. 2556 (1980), this Court stated:

> Once petitioner admitted ownership of the sizable quantity of drugs found in Cox's purse, the police clearly had probable cause to place petitioner under arrest. Where the formal arrest followed quickly on

> the heels of the challenged search of petitioner's person, we do not believe it particularly important that the search preceded the arrest rather than vice versa.

448 U.S. at 111. Likewise, in *Sibron v. New York*, 392 U.S. 40, 88 S.Ct. 1889 (1968), in a concurring opinion, Justice Harlan stated that once probable cause to arrest is established:

> There is no case in which the defendant may validly say, "Although the officer had a right to arrest me at the moment when he seized me ... the search is invalid because he did not in fact arrest me until afterwards."

392 U.S. at 77.

In this case, after Highway Patrol Officer Baldwin saw the hypodermic syringe plainly visible in David Young's left front pocket, the officer clearly had probable cause to arrest Young when he admitted that the syringe was used to take drugs. At this point, the officer's search of the vehicle and property therein, including the Respondent's purse, was valid as a search incident to an arrest. The fact that Young was not formally arrested after the search, due to what was discovered in the Respondent's purse, is of no practical consequence. Also, the arrest of Respondent Houghton, because of the greater evidence against her, is irrelevant, because of the probable cause to arrest the driver.

Accordingly, this Court should uphold the search of Respondent's purse, as a search of a passenger compartment incident to an arrest, where there was probable cause to arrest the driver of this vehicle for possession of a controlled substance.

B. When conducting a search incident to an arrest, the law enforcement officer may validly search the belongings of a passenger, as long as the belongings are in the passenger compartment of the vehicle when the search is made.

In *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860 (1981), the Court held that when an officer makes a lawful custodial arrest of a motor vehicle occupant, he or she may, contemporaneously with the arrest, search the passenger compartment of the vehicle, including containers therein. Any container found within the passenger compartment could be searched whether it was opened or closed, "since the justification for the search is not that the arrestee has no privacy interest in the container, but that the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have." 453 U.S. at 461, 101 S.Ct. at 2864. In sum, it is the arrest based on probable cause that justifies the intrusion, not the existence of probable cause to search. "[A] search incident to the arrest requires no additional justification." *United States v. Robinson*, 414 U.S. 218, 235, 94 S.Ct. 467, 476.

A case on point is *People v. Mitchell*, 42 Cal. Rptr. 2d 537 (Cal. Ct. App. 1995). There, the court held that a search of a passenger's purse, incident to an arrest of the driver, was legally justified even though the officer knew at the time of the search that the purse did not belong to the driver. In that case, the police officer, after arresting the driver for driving with a suspended license, searched the vehicle and its contents, including the defendant's purse which he found on the floorboard in front of the passenger seat. The court relied on *Belton* for the proposition that, "the arrestee's immediate control always includes the passenger compartment and its containers." *Id.* at 538. The court indicated that nothing in *Chimel* or *Belton* required that containers within the reach of the person arrested, which are searched, must themselves be his or her personal property. *Id.* at 539.

In *Staten v. U.S.*, 562 A.2d 90 (D.C. 1989), the defendant was a passenger in his own car. After arresting the driver for

driving under the influence of alcohol, the police searched the vehicle and found a loaded gun in the glove compartment, that turned out to belong to the defendant. In finding that the search of the glove compartment was lawful, the court stated:

> In circumstances where the police stop a vehicle with multiple passengers and arrest one of them, the need for the police to discover either hidden weapons which could be turned upon them or evidence which could be destroyed is no less acute simply because a person other than the arrestee owns the "container" in which those items might be located. In fact, because of the number of people involved, the need may be greater. Third-party ownership of ... "containers" therein would not necessarily prevent the arrestee from gaining access to those items. It should not, therefore, bar the police from searching them in the same manner as if they were owned by the arrestee.

Id. at 92.

According to *Belton, Mitchell,* and *Staten,* when a law enforcement officer conducts a lawful search of a vehicle incident to an arrest, the officer, in order to discover weapons and contraband, can search any item, container, or bag that is within the passenger compartment since they are presumed to be "within the reach" of the arrestee.

Clearly, the issue is one of location, not possession. It is not only the driver's property that is within his immediate control but anybody's property, as long as the property is located in the passenger compartment. Therefore, in the present case, when the Highway Patrol officer had lawfully stopped the automobile containing Young, Young's girlfriend, and the Respondent, and when the officer had probable cause to arrest Young after he admitted that the syringe in his pocket was used to take drugs, it was reasonable for the patrol officer to search the passenger compartment and any containers located within it, looking for both

weapons and evidence, regardless of whether or not the driver owned every container.

C. Law enforcement officer safety is a major reason for allowing searches of persons and passenger compartments incident to an arrest. Respondent's purse could have concealed a gun, as well as contraband, and therefore the search was reasonable under the Fourth Amendment.

Today, traffic stops are one of the riskiest tasks for law enforcement officers and pose a significant threat to their physical safety. Each traffic stop presents a situation where an officer must confront individuals unknown to him or her, who may be hiding weapons or concealing evidence anywhere on themselves or in the passenger compartment of the stopped vehicle, including in purses and other personal property. Since the advent of the automobile, approximately 300 law enforcement officers are known to have died during traffic stops, and approximately 80 percent (or 240) of these were shot to death.[5] From 1987 through 1996, there were 90 law enforcement officers feloniously killed during traffic stops and pursuits. For the same ten year period ending in 1996, there were 4,333 law enforcement officers assaulted through use of weapons during traffic stops and pursuits.[6]

This court has recognized that law enforcement officer safety during a vehicle stop is a crucial "public interest" factor in analyzing the reasonableness of searches and seizures of vehicles and their occupants under the Fourth Amendment. *Maryland v.*

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[5]Craig W. Floyd, *For Law Enforcement Officers, Traffic Stops Are Fraught with Danger*, AMERICAN POLICE BEAT, Mar. 1998, at 36. (This article discusses a number of the more egregious episodes of violence against law enforcement officers during traffic stops.)

[6]FBI UNIFORM CRIME REPORTS, U.S. DEPARTMENT OF JUSTICE, *Law Enforcement Officers Killed and Assaulted in 1996*, at 27 and 69, <http://www.fbi.gov.ucr/killassl.htm>.

Wilson, 519 U.S. 408, 117 S.Ct. 882 (1997). In citing statistics on officer assaults and deaths, the Court stated, "Regrettably, traffic stops may be dangerous encounters." *Id.* at 885.

In order to protect themselves, law enforcement officers must be able to conduct searches of the driver and the immediate surrounding area, as long as there is probable cause to make an arrest. The rationale for such searches was set forth in *Chimel*, where the Court stated, "[o]therwise, the officer's safety might well be endangered, and the arrest itself frustrated." 395 U.S. at 763, 89 S.Ct. at 2040. Accordingly, under *Belton* and *Rawlings*, *supra*, an officer may search a passenger compartment (and containers therein) for weapons during a lawful stop of a vehicle where there is probable cause for an arrest.

In *McMillon*, *supra*, the Colorado case factually similar to the present one, a police officer lawfully stopped a vehicle for a traffic offense, arrested the driver on an outstanding warrant related to drugs, directed the passenger to step out of the vehicle, searched the automobile both on probable-cause (for contraband) and on incident-to-arrest grounds, and found cocaine in the passenger's purse which the officer found behind the seat. When asked by the prosecutor if identification was the only thing he was looking for in the purse, the officer replied "no, I was also looking for weapons. I didn't want to hand [the defendant] her purse with a gun or a knife in it." 892 P.2d. at 881.[7]

In determining the reasonableness of the search of Young's vehicle in this case, as one incident to an arrest (where there was probable cause for such), the crucial "public interest" factor is law enforcement officer safety. If Young had been actually arrested prior to initiation of the search, then clearly the Wyoming Supreme

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[7]However, to look for weapons (as well as concealed evidence), the officer need not subjectively fear any occupant of the vehicle (including the driver) or need not believe that an occupant is armed, as long as the officer has probable cause to arrest the occupant. *Gustafson v. Florida*, 414 U.S. 260, 94 S.Ct. 488 (1973).

Court would have been obligated by the *Belton* and *Rawlings* decisions to uphold the search of Houghton's purse as incident to Young's arrest. However, because this search was based on probable cause to search the car generally, the Wyoming court struck down the search.

This result is illogical and makes little, if any, sense, especially in light of the probable cause to arrest Young and the clear justification for the search of the passenger compartment and Respondent's purse on that ground alone. It is quite conceivable that, although Young had not yet been formally arrested, the Respondent's purse or another container in the car could have concealed a weapon, which could have been used against the officer. Accordingly, the search and seizure of Respondent's purse is reasonable on the ground of officer safety under this Court's *Belton, Chimel, Wilson,* and *Rawlings* decisions.

CONCLUSION

For the foregoing reasons, *amicus curiae* National Association of Police Organizations urges the Court to validate the reasonableness of the search of the passenger compartment and the containers therein, including the Respondent's purse, either on the ground that there was probable cause to conduct such a search, or, alternatively, on the ground that the search was incident to an arrest of the driver, based on probable cause to arrest, although a formal arrest had not yet occurred.

Affirming the decision of the Wyoming Supreme Court in this case would create an unreasonable, confusing, and unworkable rule for law enforcement officers conducting searches of passenger compartments and their contents. It would give a green signal to those committing crimes to bring along a passenger and to have the passenger claim ownership of containers in the vehicle to prevent officer searches for evidence or weapons, thereby endangering law enforcement officers and crippling their reasonable efforts at effective crime control.

Therefore, *amicus curiae* respectfully requests that the Court reverse the judgment in this case of the Supreme Court of the State of Wyoming.

Respectfully submitted this 9th day of November, 1998.

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No. 98-184

In the
Supreme Court of the United States
October Term, 1998

The State of Wyoming,

Petitioner,

-against-

Sandra Houghton,

Respondent.

On Writ of Certiorari
To The Wyoming Supreme Court

BRIEF OF THE LEGAL AID SOCIETY OF NEW YORK CITY AND THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Whether, when probable cause exists to search a vehicle for contraband, the inference that the probable cause extends to all containers in the vehicle is negated when the police are aware that a particular container, although capable of concealing the object of the search, belongs to a person under no criminal suspicion, and a search of the container in question would thus be unlawful in the absence of probable cause to believe that particular container is concealing the object of the search.

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INTEREST OF AMICI CURIAE

The Legal Aid Society is a private, non-profit legal services agency that represents the majority of indigent criminal defendants in New York City. Its Criminal Appeals Bureau is the primary appellate defender in New York City. The National Legal Aid and Defender Association is the only national organization devoted exclusively to ensuring competent legal representation for indigent people in both civil and criminal cases nationwide. Its defender division represents public defenders and other providers of legal services to the nine out of ten criminal defendants in America who are unable to pay for a lawyer. The Association seeks to promote balance in the justice system's laws and procedures, and to ensure equal justice for all, regardless of race, ethnicity or income.

The scope of police authority to search the person and personal effects of an automobile passenger in the absence of probable cause implicates a citizen's Fourth Amendment right to be free from unreasonable searches and seizures, and the amici organizations have an interest in ensuring the protection of this right.

This brief is submitted with the consent of both petitioner and respondent.

SUMMARY OF ARGUMENT

The Fourth Amendment protection against unreasonable searches and seizures is not waived simply because one has entered an automobile. "Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize." *United States v. Ross,* 456 U.S. 798, 823 (1982). The scope of searches under the "automobile exception" is thus "no narrower – and no broader – than the scope of a search authorized by a warrant supported by probable cause." *Id.*

In defining the scope of the "automobile exception," this Court has repeatedly underscored the importance of strict adherence to the probable cause requirement of the Fourth Amendment. In *Ross*, this Court held that, just as a warrant to search premises extends to closets and containers, so, too, might a warrantless search under the "automobile exception" extend to containers within the vehicle. *Id.* at 820-821. Probable cause in the context of a moving vehicle, however, does not automatically extend to the entire vehicle. Indeed, when police have probable cause to search a particular container but lack probable cause to search the remainder of the vehicle, a search of the remainder of the vehicle is forbidden. *Id.* at 824. This Court restated this principle in *California v. Acevedo*, 500 U.S. 565, 580 (1991), when it noted that, although police had probable cause to search a container in the trunk of a vehicle, they would not have been authorized to search the entire vehicle.

It follows, then, that, if the police have probable cause to believe that a vehicle contains drugs, but they know that a container capable of concealing the object of the search

belongs to a person as to whom no suspicion exists, the rationale animating the automobile exception's license to search closed containers is defeated because the inference that the probable cause extends to that particular container has been negated. Under those circumstances, in the absence of probable cause to believe that particular container is concealing the object of the search, the search of such a container would be unlawful.

The adoption of a *per se* rule that authorizes police to search, pursuant to the "automobile exception," a container that they know has no connection to the rationale that gave rise to the probable cause to search the vehicle — and that police would thus not be authorized to search pursuant to a warrant — would eliminate the probable cause requirement of the Fourth Amendment.

Probable cause to search a container that police know to belong to someone under no criminal suspicion cannot be inferred by its mere presence in the automobile to be searched. For when the source of probable cause to search a vehicle is particular to one person in the vehicle, that probable cause does not extend to other passengers in the car in the absence of individualized suspicion. *United States v. DiRe*, 332 U.S. 581, 587 (1947); *see also Ybarra v. Illinois*, 444 U.S. 85, 91 (1979).

This is not to say that the lawfulness of the search of an automobile passenger's personal belongings turns solely on whether police possess individualized suspicion that the passenger is engaged in criminal activity. If a police officer possesses some reason other than the bag's mere presence in the automobile to believe the bag might actually contain

the object of the search, then the probable cause that presumptively extends to all containers in the vehicle would not be negated by the fact that the officer did not suspect the owner of the container in question of criminal activity, and a search of the container would be lawful. In the absence of such evidence, however, the search of a bag that belongs to a passenger whom police do not suspect of a crime would be supported only by the theory of "guilt by association." This Court has consistently rejected this doctrine. *See, e.g., Ybarra*, 444 U.S. at 91; *DiRe*, 332 U.S. at 593.

Moreover, and as petitioner concedes, this Court has consistently recognized that citizens do not sacrifice their privacy interest in their personal belongings simply because they place those belongings in an automobile. *See, e.g., Rios v. United States*, 364 U.S. 253, 262 n.6 (1960). Consequently, this Court has never held that a full-blown search of a citizen's personal property, where the sole justification is to search for evidence of a crime and protect officer safety, is authorized in the absence of probable cause. *See Terry v. Ohio*, 392 U.S. 1, 29 (1968). Under such circumstances, a citizen's privacy interest necessarily outweighs the government interest in searching for evidence and the public concern for officer safety.

The *per se* rule proposed by petitioner thus utterly ignores the probable cause requirement of the Fourth Amendment. Such a rule is unnecessary when the easily applied "notice" test, which authorizes police to search all containers except those that they know or should know belong to someone as to whom no suspicion exists, protects citizens from unreasonable searches of their personal effects.

ARGUMENT

A *PER SE* RULE AUTHORIZING A SEARCH, WITHOUT PROBABLE CAUSE, OF AN AUTOMOBILE PASSENGER'S PERSONAL BELONGINGS UNDERMINES THE PROBABLE CAUSE REQUIREMENT OF THE FOURTH AMENDMENT, ENDORSES THE DOCTRINE OF "GUILT BY ASSOCIATION," AND IGNORES THE PRIVACY INTERESTS OF THE PASSENGER.

A. The "automobile exception" does not eliminate the probable cause requirement of the Fourth Amendment.

Since the creation of the "automobile exception," this Court has emphasized that all warrantless searches of automobiles must be based on probable cause. In *Carroll v. United States*, 267 U.S. 132, 153 (1925), this Court recognized the impracticalities of obtaining a search warrant for a moving vehicle, and thus ruled that the Fourth Amendment may permit a search of an automobile without a warrant. This Court emphasized, however, that such a search may be conducted only when there is probable cause to believe that a vehicle contains contraband. *Id.* at 154.

In the course of defining the scope of searches under the "automobile exception," this Court has consistently cautioned that the exception does not vitiate the Fourth Amendment's mandate that searches be conducted pursuant to probable cause. The Fourth Amendment is not waived simply because one has entered an automobile. "Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize." *United States v. Ross*, 456 U.S. 798, 823 (1982).

In *Ross*, this Court explained that the probable cause determination for a warrantless search of a vehicle "must be based on objective facts that could justify the issuance of a warrant by a magistrate . . . ." *Id.* at 808. The scope of a warrantless search of an automobile pursuant to such probable cause is thus "no narrower — and no broader — than the scope of a search authorized by a warrant supported by probable cause." *Id.* at 823.

This Court held in *Ross* that, just as a warrant to search premises extends to closets, containers, and drawers in which the object that is the subject of the warrant might be concealed, so, too, would a "warrant to search a vehicle [ ] support a search of every part of the vehicle that might contain the object of the search." *Id.* at 820-821. Thus, under the "automobile exception," the warrantless search of a vehicle might also extend to containers within the vehicle. This extension, however, is conditioned on the preliminary determination that probable cause exists to "justif[y] the search of every part of the vehicle and its contents that may conceal the object of the search." *Id.* at 825.

Probable cause in the context of a moving vehicle does not, this Court warned in *Ross*, automatically extend to the entire vehicle. For when the police have probable cause to believe that a particular container in a vehicle contains contraband, but they affirmatively lack the requisite probable cause to believe that other parts of the vehicle contain contraband, a search of the remainder of the vehicle is forbidden. *Id.* at 824. Indeed, this Court explained:

> Just as probable cause to believe that a stolen lawnmower may be found in a garage will not

> support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. *Id.*

It follows, then, that, if the police have probable cause to believe that a vehicle contains drugs, but they know that a container capable of concealing the object of the search belongs to a person as to whom no suspicion exists, the rationale animating the automobile exception's license to search closed containers is defeated because the inference that the probable cause extends to that particular container has been negated. Under those circumstances, in the absence of probable cause to believe that particular container is concealing the object of the search, the search of such a container would be unlawful.

This Court again underscored the importance of strict adherence to the probable cause requirement in the context of the "automobile exception" in *California v. Acevedo*, 500 U.S. 565 (1991). In *Acevedo*, the police had probable cause to believe that a bag in the trunk of a vehicle contained marijuana. This Court ruled that the warrantless search of the bag was lawful because the probable cause requirement had been satisfied. 500 U.S. at 580. This Court again emphasized, however, that police were prohibited from searching those areas of the vehicle for which they lacked probable cause:

> The facts in the record reveal that the police did not have probable cause to believe that contraband was hidden in any other part of the

> automobile and a search of the entire vehicle would have been without probable cause and unreasonable under the Fourth Amendment. *Id.*

This Court's holdings in *Ross* and *Acevedo* did not address the question of whether the police are authorized, under the "automobile exception" to the warrant requirement, to search a container they know to be the personal property of a person who is not under criminal suspicion. In both *Ross* and *Acevedo*, only one person was traveling in the vehicle involved, and the containers searched were thus implicitly connected to the person who was the genesis of the probable cause. Likewise, in *Carroll v. United States*, *supra*, 267 U.S. at 160, although more than one person was traveling in the car that was ultimately searched, the police had probable cause to believe that all of the car's occupants were engaged in illegal activity.

The rationale underlying *Ross* and *Acevedo* cannot be logically extended to encompass the search of a container that the police know to belong to someone whom they do not suspect of a crime. Indeed, in *Ross* and *Acevedo*, this Court expressly disapproved a search of a portion of a vehicle for which the police possess information that negates the inference that the probable cause extends to that portion of the vehicle. The adoption of a *per se* rule that authorizes police to search, pursuant to the "automobile exception," a container that they know has no connection to the rationale that gave rise to the probable cause to search the vehicle — and that police would thus not be authorized to search pursuant to a warrant — would eliminate the probable cause requirement of the Fourth Amendment.

B. That the bag of a passenger who is under no criminal suspicion is present in a vehicle that police have probable cause to believe contains contraband does not, standing alone, justify the search of the bag under the rationale of the "automobile exception."

When police officers have probable cause to search a vehicle for contraband, but they are aware that a particular container capable of concealing the object of the search belongs to a passenger for whom the police lack any criminal suspicion, a search of that container based solely on its presence in the automobile cannot be justified under the rationale of the "automobile exception." Under such circumstances, probable cause to search the container in question cannot be inferred by its mere presence in the automobile to be searched, for the application of such an inference deprives the owner of the container of her Fourth Amendment right to be free from unreasonable searches and seizures.

When the source of probable cause to search a vehicle is particular to one person in the vehicle, that probable cause does not extend to other passengers in the car in the absence of individualized suspicion. As this Court explained in *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979):

> Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person. This requirement cannot be undercut by simply pointing to the fact that coincidentally there exists probable cause to

> search or seize another or to search the premises where the person may happen to be.

Thus, in *Ybarra*, this Court held that the patrons of a tavern that was the subject of a search warrant were cloaked with the Fourth Amendment protection against unreasonable searches and seizures. *Id.* "That individualized protection was separate and distinct from the Fourth and Fourteenth Amendment protection possessed by the proprietor of the tavern," who was also the subject of the warrant. *Id.* at 91-92.

Likewise, persons in automobiles are entitled to the individualized protections afforded by the Fourth Amendment. In *United States v. DiRe*, 332 U.S. 581, 587 (1947), this Court held that probable cause to search a vehicle cannot sustain the search of a passenger whom the police lack probable cause to believe is engaged in criminal activity.

This is not to say that the lawfulness of the search of an automobile passenger's personal belongings turns solely on whether police possess individualized suspicion that the passenger is engaged in criminal activity. Certainly, if a police officer, although aware that a container belongs to such a passenger, has some reason other than the bag's mere presence in the automobile to believe the bag might actually contain the object of the search, then a search of the bag would be lawful, under the "automobile exception," in the absence of individualized suspicion.

For example, if an officer observed the occupants of a stopped vehicle making furtive movements toward each other, or saw an occupant reach into the backseat of the

vehicle, that officer, upon developing probable cause to search the vehicle, might then have a legitimate basis for believing that the object of the search was being secreted in another passenger's belongings. In the presence of such facts, the probable cause that presumptively extends to all containers in the vehicle would not be negated by the fact that the officer did not suspect the owner of the container in question of criminal activity.

In the absence of such evidence, however, the search of a bag that belongs to a passenger whom police do not suspect of a crime would be supported only by the theory of "guilt by association." This Court has consistently rejected this doctrine.

In *DiRe*, the government argued that, when there is probable cause to search a vehicle for contraband, police may search any passenger in the vehicle if the object of the search is capable of being concealed on the person. *Id.* at 584. This Court explicitly rejected this argument and noted, "Presumptions of guilt are not lightly to be indulged from mere meetings." 332 U.S. at 593. This Court specifically noted that, in the absence of any indication that a person is connected to the underlying probable cause, "[a]ny inference that everyone on the scene of a crime is a party to it must disappear . . . ." *Id.* at 594.

Twenty years later, this Court again rejected the theory of "guilt by association" in *Sibron v. New York*, 392 U.S. 40 (1968). In *Sibron*, the police arrested the defendant and searched his pockets simply because they saw him talking to known drug addicts over the course of an eight-hour period. This Court held that the defendant's association

with known drug addicts, standing alone, did not create the requisite probable cause:

> The inference that persons who talk to narcotics addicts are engaged in the criminal traffic in narcotics is simply not the sort of reasonable inference required to support an intrusion by the police upon an individual's personal security. *Id.* at 62.

In *Ybarra,* 444 U.S. at 88, the police obtained a warrant to search a small, one-room bar and the person of the bartender for narcotics. The police proceeded to search the defendant, who was one of twelve patrons in the bar. This Court held that the defendant's mere presence in the room where drugs were believed to be located could not, standing alone, justify the pat-down search of his person. This Court explicitly stated, "[A] person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." *Id.* at 91, *citing Sibron v. New York*, 392 U.S. at 62-63.

The inference that, because one passenger in an automobile stopped for speeding admits to police that he uses illegal drugs, all of the passengers potentially possess narcotics, is *per se* unreasonable. *Sibron*, 392 U.S. at 62. Likewise, the inference that a person traveling in a car with someone suspected of a crime is presumptively aware of that person's criminal activities and capable of hiding that person's contraband is *per se* unreasonable. *DiRe*, 332 U.S. at 593.

Nor can the mere possibility that the criminally liable might be capable of placing their contraband in another

person's bag without that person's knowledge, standing alone, amount to probable cause. Indeed, in this case, that possibility was apparently not even present in the mind of the officer who conducted the search of the vehicle and the passenger's bag. As the Wyoming Supreme Court noted, the officer testified that there were no sudden movements within the car and that the occupants were under constant observation (Pet. App. 18). Thus, "[t]he officer's testimony clearly established that there was no reason to believe the object of the search was placed in the purse prior to the stop . . . ." *Id.*

Clearly, the officers here were concerned only with the potential criminal activity of the passenger, since, upon discovering narcotics in the passenger's bag, the police arrested the passenger and ultimately released their original suspect, who had admitted that he used drugs. Had the officers been truly searching the bag for the original suspect's narcotics, they surely would have arrested that suspect when they found narcotics in the passenger's bag, particularly since the passenger denied ownership of some of the narcotics discovered therein.

The theory of "guilt by association" is not somehow more palatable because the association in question occurs within an automobile. Contrary to petitioner's assertions, a more intimate relationship between persons is not implied by the fact that they travel together in a car. Indeed, there are countless examples that demonstrate why persons traveling together in automobiles are not presumptively aware of the criminal activities of fellow passengers.

The notion that a passenger in a limousine would be aware that the chauffeur has a bag of drugs stashed between the two front seats, let alone that the passenger logically possesses drugs because the chauffeur is a drug user, belies common sense. Under the *per se* rule proposed by petitioner, however, the limousine passenger would, by virtue of his or her presence in a vehicle that the police had probable cause to search, be forced to submit his briefcase to a full-blown search for narcotics.

Similarly, the millions of people who ride in car pools to work each day would, because they share the common purpose of commuting from a suburb to an urban center, be presumed to be complicit in the criminal activities of their fellow commuters. In reality, however, these people, who, while in the car, may be reading the paper or a novel when it is not their day to drive, are not likely to be sharing the intimate details of their lives, let alone their potentially illegal activities, with each other.

Likewise, it cannot logically be presumed that the lower-income person who cannot afford the luxury of a vehicle is aware that the neighbor who has offered a ride has contraband in his car. Nonetheless, that passenger, who, for example, would have no reason to know that the tools in the neighbor's car could form the probable cause to believe the neighbor committed a recent burglary in the area, will now be forced to stand by while her bag is searched in the presence of not just the neighbor, but anyone else who happens by the scene of what was initially a traffic stop.

Associations in automobiles are certainly no more fraught with the potential for criminal conspiracy than

associations in small neighborhood taverns. *See Ybarra*, 444 U.S. at 91. Nor do automobiles present a greater opportunity for the criminally liable to hide their contraband in another's bag or jacket without that person's knowledge. Although passengers in automobiles have easy access to each other's belongings, for that very reason any attempt by a vehicle occupant to place contraband in another's bag or jacket is more likely to be detected within the close confines of the vehicle, where everything within reach is also within everyone's immediate view. Indeed, the opportunities for hiding contraband in another person's belongings without that person's knowledge are much greater in fixed premises, where people are more likely to leave their jackets in a closet accessible to others, or place their purses or briefcases in another room.

Therefore, nothing about an automobile, as opposed to fixed premises, can justify the abandonment of an individual's Fourth Amendment right to be free from unreasonable searches and seizures simply because someone else in the vehicle is suspected of a crime. *See DiRe*, 332 U.S. at 593. The *per se* rule proposed by petitioner, however, would make legitimate the doctrine of guilt by association, and would deprive all persons traveling in automobiles of the protection of the Fourth Amendment.

C. Citizens do not forfeit their expectation of privacy in their personal belongings by placing them in an automobile.

In *Delaware v. Prouse*, 440 U.S. 648, 662-663 (1979), this Court articulated the privacy interests of persons traveling in automobiles:

> An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to governmental regulation. Automobile travel is a basic, pervasive, and often necessary mode of transportation to and from one's home, workplace, and leisure activities. Many people spend more hours each day traveling in cars than walking on the streets. Undoubtedly, many find a greater sense of security and privacy in traveling in an automobile than they do in exposing themselves by pedestrian or other modes of travel. Were the individual subject to unfettered governmental intrusions every time he entered an automobile, the security guaranteed by the Fourth Amendment would be seriously circumscribed.

Certainly, this Court has noted that the nature of an automobile results in a lessened expectation of privacy therein. *New York v. Class*, 475 U.S. 106, 112 (1985). This does not mean, however, that the Fourth Amendment protection from unreasonable searches and seizures is forfeited by entry into a moving vehicle. Instead, this Court has emphasized that "[a] citizen does not surrender all the

protections of the Fourth Amendment by entering an automobile." *Id.*

Indeed, in *DiRe*, 332 U.S. at 586-587, this Court explicitly ruled that a passenger in an automobile does not surrender his expectation of privacy in his person, even when the police have probable cause to believe that the vehicle contains contraband that is capable of being concealed on the person.

More recently, in *Maryland v. Wilson*, 519 U.S. 408 (1997), although this Court held that an order to exit a vehicle during a routine traffic stop was not a violation of a passenger's implicit and intact right to be free from unreasonable searches and seizures, it nevertheless recognized that an automobile passenger does not waive the protection of the Fourth Amendment. In *Wilson*, this Court balanced a passenger's liberty interest against the public concern for officer safety and determined that the order to exit the vehicle was reasonable under the Fourth Amendment because, where a passenger is already detained by virtue of the traffic stop of a vehicle, the additional intrusion of requiring the passenger to exit the vehicle is "minimal." *Id.* at 415.

Nor do persons sacrifice their privacy interest in personal belongings simply because they place those belongings in an automobile. In *Rios v. United States*, 364 U.S. 253 (1960), this Court held that a passenger in a taxicab is entitled to Fourth Amendment protection, even if the passenger places the package in question on the floor of the taxicab. *Id.* at 262 n.6. In *New York v. Belton*, 453 U.S. 454, 461 (1981), this Court again implicitly recognized that

a person does not abandon his or her privacy interest in personal belongings when he or she places those belongings in an automobile. Although this Court held in *Belton* that police could lawfully search the jacket of a passenger incident to that passenger's arrest, it emphasized that

> the justification for the search is not that the arrestee [a passenger] has no privacy interest in the container, but that the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have.

Id.[1]

Petitioner concedes that citizens do not waive the protection of the Fourth Amendment or their privacy interest

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[1] The dissent in the Wyoming Supreme Court argued that respondent forfeited her expectation of privacy in her purse when, after being ordered by police to exit the vehicle, she left the purse in the vehicle (Pet. App. 24-25). This can hardly be said to constitute an abandonment of one's expectation of privacy in a closed bag containing personal belongings. Certainly, "society is prepared to accept . . . as objectively reasonable" an expectation of privacy in one's purse temporarily left behind in an automobile that one has been ordered by police to exit. *See California v. Greenwood*, 486 U.S. 35, 39-40 (1988).

Indeed, it would be unusual, and even dangerous, for a person to reach for his or her personal belongings before complying with a police order to exit the vehicle. Moreover, when police officers order people out of vehicles, they often order such people to leave their personal belongings in the car. Under the Wyoming Supreme Court dissent's reasoning, then, passengers who leave their belongings behind when they are lawfully ordered out of vehicles during routine traffic stops would be helpless to challenge a search of their belongings during the course of the traffic stop.

in their personal belongings when they enter an automobile. *See Brief for the Petitioner*, p. 30. Petitioner asserts, however, that, at the moment a vehicle becomes the subject of probable cause, each and every passenger's Fourth Amendment right to be free from an unreasonable search and seizure of their personal effects simply disappears, even when the source of the probable cause is a different passenger. *Id.* Such a drastic leap, however, utterly ignores this Court's explicit recognition that automobile passengers do not abandon all privacy interests in their persons or their personal belongings. *Rios*, 364 U.S. at 262; *DiRe*, 332 U.S. at 586-587.

D. Both the government interest in searching for evidence of crime and the public interest in officer safety are necessarily outweighed by the absence of probable cause to conduct a search of a citizen's personal belongings.

This Court has never held that a full-blown search of a citizen's personal property, where the sole justification is to search for evidence of a crime, is authorized in the absence of probable cause. On the contrary, when confronted with full-blown searches for evidence conducted without probable cause, this Court has unequivocally ruled that such searches violate the Fourth Amendment. *See Ybarra*, 444 U.S. at 91; *DiRe*, 332 U.S. at 587.

Manifestly, the government's interest in searching for evidence of crime and preventing its destruction or disappearance lies at the heart of every Fourth Amendment inquiry. This Court, however, has explicitly and consistently rejected the notion that the full-blown search of persons or their belongings without probable cause can ever be justified

by the "need to prevent the disappearance or destruction of evidence of crime." *Terry v. Ohio*, 392 U.S. 1, 29 (1968), *citing Preston v. United States*, 376 U.S. 364, 367 (1964). Moreover, this Court has specifically rejected the argument, which permeates the brief of petitioner and those of amici in support thereof, that "the important governmental interest in effectively controlling traffic in dangerous, hard drugs and the ease with which the evidence of narcotics may be concealed or moved around from person to person" can ever outweigh the probable cause requirement of the Fourth Amendment. *Ybarra*, 444 U.S. at 94 (*quotations omitted*).

Likewise, when the search involved is the full-blown search of personal effects, the probable cause requirement necessarily outweighs the public concern for officer safety. For the only intrusion authorized by a concern for officer safety is the pat-down frisk, by definition less intrusive than a full-blown search of a person or her belongings. *Terry*, 392 U.S. at 24-25. Even the pat-down search, however, must be based on some quantum of suspicion. *Id.* at 27 (a pat-down search is justified only when there is an articulable fear that the person to be frisked is armed and dangerous).

Moreover, any unique safety concerns that might be presented by the search of a vehicle for evidence are necessarily accommodated by the rule this Court adopted in *Maryland v. Wilson,* 519 U.S. at 414-415. In *Wilson*, this Court deemed the order to exit a vehicle in which a person is already lawfully detained as a limited additional intrusion that sufficiently ensures officer safety. *Id.* To now bootstrap a full-blown search of a passenger's belongings onto *Wilson*, simply because there is now probable cause to believe that the vehicle — but not the passenger's bag — contains

evidence of a crime, would be to reject what this Court has historically deemed reasonable in the name of officer safety. *See Terry*, 392 U.S. at 24.

Notably, if a search of a passenger's belongings in the absence of probable cause could be justified under the rationale that a search of a vehicle for drugs is inherently dangerous, then this Court would not have explicitly stated that police are prohibited from searching a vehicle, even after the officers have discovered drugs in the trunk of that vehicle, when the police otherwise lack probable cause to search the remainder of the vehicle. *Acevedo*, 500 U.S. at 580.

The officers in the present case took command of the situation by ordering the driver and all of the passengers out of the car. Moreover, they took the additional, and questionable, step of frisking the passengers in the absence of any articulable suspicion that the passengers were armed or dangerous. *See Terry*, 392 U.S. at 27.[2] To hold that police officers may now take the additional step of conducting a full-blown search of all passengers' personal belongings, in the name of safety, when the officers lack any basis for believing that the passengers present a safety threat — and thus lack even the authority to frisk the passengers — would be to necessarily overrule *Terry*.

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[2] The propriety of the officers' frisk of the passengers is not before this Court, although, as the Wyoming Supreme Court noted, a frisk in the absence of reasonable suspicion that a person is armed and dangerous has been condemned by this Court. Pet. App. 3 n.1, *citing Terry v. Ohio*, 392 U.S. 1; *see also Ybarra*, 444 U.S. at 93.

Strict adherence to the principles in *Terry* in the context of the "automobile exception" does not, contrary to petitioner's assertions, create an anomalous distinction between searches incident to arrest and searches for evidence. As the Solicitor General concedes, this Court has not addressed the question of whether police may search, incident to the arrest of one vehicle occupant, the belongings of a passenger who is under no criminal suspicion whatsoever (*Brief for the United States as Amicus Curiae*, p. 24). *See Belton*, 453 U.S. at 461 (search of automobile passenger's jacket was lawful because it was incident to that passenger's arrest); *see also United States v. Bell*, 762 F.2d 495, 499 n.5 (6th Cir. 1985) ("*Belton* and *Chimel* [395 U.S. 752 (1969)] do not support the proposition that the search of the passenger compartment of an automobile authorized by *Belton*, 453 U.S. at 460, extends to passengers in a car driven by one who is being arrested pursuant to a warrant"); *Commonwealth v. Shiflet*, 670 A.2d 128, 131 (Pa. 1995) (citations omitted) ("*Belton* and *Chimel* have not been extended to divest a third party of his or her legitimate expectation of privacy").

In any event, the rationale underlying the search-incident- to-arrest doctrine – the danger to the officer and the potential destruction of evidence – is manifestly inapplicable in a non-arrest situation where the police are simply searching for evidence. As this Court has recognized, the potential peril inherent in the situation that confronts an officer increases once the officer begins the process of effecting an arrest. *See Chimel v. California*, 395 U.S. 752, 763 (1969). However, absent an arrest, this Court has expressly held that concerns for officer safety and the need to seize evidence cannot justify a full-blown search of personal effects on less than probable cause. *See Ybarra*, 444 U.S. at 94; *Terry*,

392 U.S. at 24. Thus, even were a search of a passenger's belongings authorized pursuant to the search-incident-to-arrest rule, it would not be anomalous to hold that a search of a passenger's belongings during a search for evidence, and in the absence of an arrest, is unlawful.

In sum, the probable cause requirement necessarily outweighs both the fear that evidence of a crime might escape detection and concerns for officer safety. Manifestly, when police are prohibited from searching persons or their property on mere hunches, *see Terry*, 392 U.S. at 27, the possibility always exists that evidence of a crime will, in some instances, go undetected. However, a *per se* rule that authorizes searches of all automobile passengers' belongings in the absence of probable cause would extend unfettered discretion to police officers, and would subject citizens to unjustified and humiliating intrusions into their personal effects. The Fourth Amendment, and this Court's jurisprudence, do not tolerate such a blatant disregard of personal privacy.

E. A *per se* rule that authorizes blanket searches, pursuant to the "automobile exception," of all passengers' personal belongings is unnecessary because an easily applied and narrow rule exists that authorizes police to search all containers as to whose ownership they are uncertain, and at the same time preserves the probable cause requirement of the Fourth Amendment.

A *per se* rule that strips all persons traveling in an automobile of their individual Fourth Amendment protection against unreasonable searches and seizures is unnecessary when a flexible and workable test is readily available to the

officer in the field. Under the "notice" test articulated by the Wyoming Supreme Court, a police officer is prohibited from searching only those containers that he or she knows or should know belong to a person for whom the officer lacks any particularized suspicion and whose connection to the vehicle to be searched is merely that of a passenger.

The "notice" test is not difficult for a police officer to understand or apply. Indeed, in the present case, the police officer testified that he knew the purse in question belonged to the respondent before he ever searched it. Thus, the facts immediately presented to the officer in this case vested him with actual knowledge that the purse belonged to someone other than the driver, who was the only person the officer suspected of criminal activity. The officer also testified that he saw no sudden movements in the vehicle that would otherwise have led him to believe that the driver's drugs, the object of the search, were potentially concealed in respondent's purse.

As this case demonstrates, the "notice" test does not require extensive inquiry as to a bag's ownership. Plainly, under the test, if an officer is uncertain as to who owns a bag, the officer may search it pursuant to the "automobile exception." By definition, then, the "notice" test would ultimately preclude searches of only a limited category of items that are readily and immediately identifiable to an officer as belonging to specific persons within a vehicle. For it is only when an officer knows or should know from the immediate, objective facts that a particular bag within the vehicle is owned by a person who is under no criminal suspicion, the officer is precluded from searching that bag

absent probable cause to believe that the object of the search is in that particular bag.

Certainly, under the "notice" test, courts would be required to determine, in the absence of an officer's actual knowledge that a container is owned by a particular person, whether the officer should have known the container belonged to that person. Every day, however, courts review objective facts available to police officers in order to determine if searches and seizures are reasonable under the Fourth Amendment:

> The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief" that the action taken was appropriate?

Terry v. Ohio, supra, 392 U.S. at 21-22 *(citations omitted)*.

Thus, in *Terry*, *id.* at 27, even the less intrusive pat-down search required a case-by-case analysis of the facts that contributed to a police officer's suspicion. It follows

that, when the search in question is a full-blown intrusion into a citizen's personal belongings, some case-by-case inquiry into the reasonableness of the police intrusion is required by the Fourth Amendment.

Indeed, it can be said that uniform enforcement of the probable cause requirement of the Fourth Amendment can be achieved only through the adoption of the notice test. For a *per se* rule that authorizes the search of all containers, regardless of ownership, is fraught with the potential for abuse. Such a rule vests police officers with unfettered discretion to conduct searches of vehicle passengers and their belongings, even when neither bear any relationship to the probable cause that the police have acquired.

Under petitioner's reasoning, anything capable of concealing the evidence for which the police are searching could be searched, regardless of information negating the inference that probable cause extends to all of the containers in the vehicle. Thus, if the object of the search is drugs, which can be just as easily concealed in a coat or pants pocket as they can in a bag, what is to stop a police officer from searching the actual persons of all passengers in a vehicle that is the subject of probable cause? If the officer is arbitrarily limited to only a passenger's personal effects, and precluded from a search of the person, is he or she authorized to search only those bags that are physically within the automobile, or may the officer search a bag that a passenger carries out of the vehicle? What if a passenger exits the vehicle with a bag on her shoulder and then, during the course of the search, places the bag on the ground near the vehicle? Certainly, none of these scenarios negates the fact that the object of the search is capable of being concealed in

the bag. Where is this Court to draw the alleged "bright line"?

Thus, the *per se* rule proposed by petitioner, in the name of uniformity, would, quite simply, turn the Fourth Amendment on its head. The notice test, however, would provide officers with straightforward and necessary guidance and ensure that automobile searches are properly conducted pursuant to the probable cause requirement embodied in the "automobile exception" and the Fourth Amendment.

CONCLUSION

The judgment of the Wyoming Supreme Court should be affirmed.

Respectfully submitted,

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No. 98-184

In the

Supreme Court of the United States

October Term, 1998

THE STATE OF WYOMING,

Petitioner,

v.

SANDRA HOUGHTON,

Respondent.

On Writ of Certiorari
To the Wyoming Supreme Court

BRIEF OF THE STATES OF KENTUCKY, ALABAMA, ARIZONA, ARKANSAS, CALIFORNIA, CONNECTICUT, DELAWARE, GEORGIA, HAWAII, IDAHO, IOWA, LOUISIANA, MAINE, MARYLAND, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW JERSEY, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, UTAH, AND THE TERRITORY OF GUAM AS AMICI CURIAE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the "automobile exception" to the Fourth Amendment's warrant requirement allows police to conduct a warrantless search of a passenger's personal belongings – in this case a purse – located inside the passenger compartment of a vehicle lawfully stopped for traffic violations, when police have developed probable cause to search the vehicle generally for controlled substances but have no probable cause specific to the purse or passenger.

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INTEREST OF THE AMICI CURIAE

Amicus Commonwealth of Kentucky and 30 other *amici* States, Commonwealths and Territories write in support of the Petitioner, State of Wyoming, urging the Court to reverse the decision of the Wyoming Supreme Court. In *United States v. Ross*, 456 U.S. 798 (1982), the Court announced a single, straightforward, and easily applied rule governing the scope of car searches under the *Carroll v. United States*, 267 U.S. 132 (1925), "automobile exception" to the warrant requirement. The decision below qualified *Ross* with additional rules that not only create improper hurdles to society's interest in enforcing its laws, but are confusing and difficult for police officers and jurists to apply.

The proper scope of warrantless car searches is an issue of great concern to *amici* because "countless vehicles are stopped on highways and public streets everyday, and [the Court's] cases demonstrate that it is not uncommon for police officers to have probable cause to believe that contraband may be found in a stopped vehicle." *Ross*, 456 U.S. at 803-04. Because state and local law enforcement officers in the field, and state and local courts sitting in review of those officers, bear the greater part of the burden of making proper scope determinations in car searches, the *amici* join together in asking the Court to reaffirm without further qualification the clear, coherent rule announced in *Ross*.

SUMMARY OF ARGUMENT

I. Below, the Wyoming Supreme Court held that the search of a passenger's (Houghton's) purse was beyond the scope of a legitimate warrantless car search based on probable cause to believe that the driver had concealed contraband in the car.

That decision contradicts this Court's holding in *United States v. Ross*, 456 U.S. 798, 825 (1982), that, "[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." Because it is undisputed that the traffic stop was lawful and that the police had probable cause to believe that contraband was concealed in the car, and because Houghton's purse was capable of containing the sought-after contraband, the decision below should be reversed.

The lower court's concern that Houghton was not suspected of concealing contraband in the car is misplaced because, under the Fourth Amendment, property may be searched based on the reasonable belief that it contains evidence of crime regardless of whether its owner is suspected of criminal involvement. *See Zurcher v. Stanford Daily*, 436 U.S. 547 (1978). And, in *New York v. Belton*, 453 U.S. 454, 460 (1981), this Court recognized the principle that a car occupant can conceal evidence of crime virtually anywhere in the car. The lower court's belief that Houghton's purse is entitled to special protections as a "worthy" personal belonging is equally misplaced. The two principal cases it relied upon are readily distinguishable as involving searches of persons, not personal belongings, and as involving searches that did not occur in or around a car. Moreover, *Ross* itself rejected any notion that personal belongings are "worthy" of more protections than other containers during car searches.

II. The new rule created by the Wyoming Supreme Court is subject to fraud and abuse, is difficult to apply, and is anomalous in comparison to the rule governing the scope of car searches incident to arrest. The rule invites persons who wish to transport contraband in cars to conceal it in the personal

belongings of other occupants of the car, thereby frustrating its detection by police even where police have probable cause to believe that contraband is concealed in the vehicle. Also, the rule requires often difficult distinctions to be drawn between suspect and non-suspect occupants and between containers that may be searched and those that may not. This would inevitably lead to confusion in law enforcement and to inconsistent judicial decisions. Finally, the rule is incongruous in comparison to *Belton's* rule governing the scope of car searches incident to arrest, which includes all containers in the passenger compartment.

ARGUMENT

I. THIS COURT MADE CLEAR IN *UNITED STATES v. ROSS* AND *CALIFORNIA v. ACEVEDO* THAT, WHEN POLICE HAVE PROBABLE CAUSE TO BELIEVE THAT CONTRABAND IS IN AN AUTOMOBILE, THEY MAY SEARCH ALL CONTAINERS IN THE VEHICLE CAPABLE OF CONCEALING THE CONTRABAND

In *United States v. Ross*, 456 U.S. 798, 825 (1982), this Court held that the scope of a search under the automobile exception to the warrant requirement properly includes "every part of the vehicle and its contents that may conceal the object of the search." Refusing to subject the search of a car and a search of the contents of the same car to independent Fourth Amendment scrutiny, the Court imposed only the common-sense requirement that the scope of the car search be limited to the car's parts and contents "that might contain the object of the search." *Id.* at 821. In this case, because it is undisputed that the car search fell within the automobile exception to the

warrant requirement and the purse containing the confiscated drugs and paraphernalia was capable of concealing the object of the search, *Ross* dictates reversal. In holding that the search of Houghton's purse was beyond the legitimate scope of the car search, the Wyoming Supreme Court improperly imposed additional scope limitations not allowed by *Ross*.

1. In *Ross*, the police initiated a warrantless car search based on probable cause to believe that the driver of the car was selling narcotics from the vehicle. During the initial search of the car, police found narcotics in a paper bag located in the trunk. 456 U.S. at 800-01. The Court held that the search of the paper bag was reasonable under the Fourth Amendment because the car search was legitimate at its inception under the automobile exception, and because the paper bag was capable of concealing the object of the search. The Court reasoned that "[c]ontraband goods rarely are strewn across the trunk or floor of a car," but usually are "enclosed within some form of container," and concluded that the value of the automobile exception announced in *Carroll v. United States*, 267 U.S. 132 (1925), would be "largely nullified if the permissible scope of a warrantless search of an automobile did not include containers and packages found inside the vehicle." *Ross*, 456 U.S. at 820.

Subsequently, in *California v. Acevedo*, 500 U.S. 565, 570-73 (1991), the Court confirmed that the automobile exception encompasses both automobiles and the containers within them, and thus "the privacy interest in those closed containers yield[s] to the broad scope of an automobile search." *Id.* at 572. *Acevedo* reaffirmed *Ross*' rejection of any "distinction between containers and cars" that would require independent justification to search a container within a car over and above that required to search the car. *Id.* at 573. Thus, the only

relevant question for determining whether a container found in a car is within the scope of a legitimate search of the car is whether the container was such that it "may [have] conceal[ed] the object of the search." *Ross*, 456 U.S. at 825.

The search of Houghton's purse readily meets that test. It is undisputed that the police had probable cause to believe that the owner, and driver, of a car had concealed contraband somewhere in the car; that the police were therefore justified in searching the car under the automobile exception to the warrant requirement; and that Houghton's purse was found within the car and was capable of concealing the sought-after drugs. (Pet. App. 4, 6). This is the end of the Fourth Amendment inquiry under *Ross* and *Acevedo*.

2. The Wyoming Supreme Court, however, qualified *Ross* with a rule excluding containers from the scope of a car search under the automobile exception when the police know or should know that the container is the personal belonging of a non-suspect occupant and when the suspect occupant had no opportunity to conceal contraband in the belonging immediately before or during the police investigation. (Pet. App. 21-22). Applying that rule, the court held that the search of Houghton's purse violated the Fourth Amendment. (*Id.*) This qualification of *Ross* is improper because neither its "non-suspect occupant" component nor its "personal belongings" component vindicate relevant Fourth Amendment concerns.

To the extent the Wyoming Supreme Court was concerned by the absence of probable cause to suspect Houghton of criminal activity at the time of the search, its concern was misplaced. The scope of a warrantless car search based on probable cause hinges not on whether the owner of a container

found in the car is reasonably suspected of crime, but rather only on whether the container "may conceal the object of the search." *Ross*, 456 U.S. at 825. The principle that property not owned by a person reasonably suspected of criminal activity might nevertheless fall within the scope of a lawful search was not freshly minted in *Ross*. To the contrary, in *Zurcher v. Stanford Daily*, 436 U.S. 547 (1978), the Court criticized the contention that a legitimate search under the Fourth Amendment is restricted to places and property owned or possessed by persons suspected of criminal involvement. Instead, *Zurcher* clarified that reasonable cause to believe the object of the search may be found on the searched property is the critical element of Fourth Amendment reasonableness, not suspicions regarding the property owner's culpability. *Id.* at 553-56; *cf. Maryland v. Wilson*, 519 U.S. 408 (1997) (recognizing that a non-suspect passenger may be seized by police).

Likewise, in *New York v. Belton*, 453 U.S. 454, 460 (1981), this Court recognized a bright-line rule that containers "inside the relatively narrow compass of the passenger compartment of an automobile" are within the control of all the car's occupants. In *Belton,* the Court held that any container found within the passenger compartment of a car was within the scope of a vehicle search initiated incident to lawful arrest, in part because of law enforcement's legitimate need to prevent the destruction of evidence concealed in the car within the reach of the arrestee. *Id.* This rationale itself is based on the implicit understanding that the arrestee could have secreted evidence of crime virtually anywhere in the car. The implicit understanding regarding the possible locations of evidence of crime within the car applies with equal force, if not more, when the searches are initiated

based on probable cause to believe contraband is concealed in the car.

In this case, the driver (Young) might have concealed illegal drugs anywhere in the car. We know this based on reasonable understandings about the physical arrangements of occupants and containers within cars, the social relationships of traveling companions, and the incentives a person like Young has to conceal contraband in the belongings of a non-suspect occupant like Houghton. As a rule then, the police's knowledge that a particular container found in a car is owned by a non-suspect occupant in no way renders the container incapable of concealing drugs hidden by a suspect occupant.

The Wyoming Supreme Court also erred to the extent that it relied on special concerns for the privacy of personal belongings to justify providing Houghton's purse with heightened constitutional protections. The court's reliance on *Ybarra v. Illinois*, 444 U.S. 85 (1979), and *United States v. Di Re*, 332 U.S. 581 (1948), for the principle that personal belongings are entitled to heightened constitutional protections in car searches was misplaced. In *Ybarra*, the Court invalidated the search of a bar patron's person pursuant to a warrant to search the bar. 444 U.S. at 87-89. In *Di Re*, the Court invalidated a station house search of a person. 332 U.S. at 582-83. These cases are easily distinguished from this case because both involved the search of a person, not a search of personal belongings, and because both involved searches that did not occur in or around a car. *See Acevedo*, 500 U.S. at 578 ("From *Carroll* through *Ross*, this Court has explained that automobile searches differ from other searches.").

Moreover, in *Ross* the Court thoroughly rejected the idea that the scope of a car search might depend on whether a container in the car was "worthy" like a purse or "unworthy" like a paper bag. 456 U.S. at 822 (citing plurality and dissenting opinions in *Robbins v. California*, 453 U.S. 420 (1981)). The Court emphatically stated that "[t]he scope of a warrantless search of an automobile . . . is not defined by the nature of the container in which the contraband is secreted," and held that the Fourth Amendment protection provided to all containers regardless of their nature gives way equally when a container might contain the object of the search. *Id.* at 824. Thus, Houghton's purse cannot escape the broad scope of the car search in this case on the ground that it was a personal belonging.

II. THE RULE ANNOUNCED BELOW IS SUBJECT TO FRAUD AND ABUSE, IS DIFFICULT TO APPLY, AND IS ANOMALOUS IN COMPARISON TO THE SCOPE OF CAR SEARCHES INCIDENT TO ARREST

The Wyoming Supreme Court crafted a new rule excluding a non-suspect occupant's personal effects from a car search based on probable cause, which itself is subject to exception when police have no notice that an effect is owned by a non-suspect occupant or when a suspect occupant had an opportunity to conceal contraband in the personal effects of a non-suspect occupant immediately prior to or during the police investigation. (Pet. App. 15-18). Not only does the court's "non-suspect occupant's belongings" rule transgress *Ross* and general Fourth Amendment principles, it creates a host of practical difficulties and anomalies.

A. The Wyoming Supreme Court's Rule is Subject to Fraud and Abuse

The rule devised by the Wyoming Supreme Court, if adopted by this Court, would create a search-free zone within cars that would undoubtedly be abused by persons seeking to illegally transport contraband in automobiles. It is easy to envision such a person intentionally concealing illegal drugs in the belongings of a passenger, rather than in a compartment of the car or in his own effects. As a consequence, even in cases in which the police develop probable cause to believe that person has concealed contraband in the vehicle, the contraband would be immune from detection, unless the police also develop probable cause specific to the passenger, which will not always be possible. Conversely, non-suspect passengers could themselves frustrate the detection of contraband in containers otherwise within the scope of the car search by falsely claiming ownership of the container.

The Wyoming Supreme Court recognized the problem of fraud and abuse in its decision and sought to remedy the problem by allowing police to search a non-suspect occupant's belongings when a suspect occupant had an opportunity to conceal contraband in those belongings immediately prior to or during the police investigation. (Pet. App. 18). This approach, however, fails to solve the fraud and abuse problem because it merely encourages a lawbreaker to conceal contraband in the personal effects of a non-suspect passenger at an earlier time, rather than waiting to do so at the beginning or in the midst of a lawful traffic stop. Accordingly, despite the Wyoming court's attempted remedy, its rule still creates a significant loophole.

B. The Wyoming Supreme Court's Rule is Difficult to Apply

Under the court below's rule, police and courts must not only draw the straightforward and simple distinctions required by *Ross*, but in any particular case must also make several additional determinations: which occupants they reasonably believe have concealed contraband in the car, which personal effects in the car belong to non-suspect occupants, and whether the suspect had the opportunity to conceal contraband in the non-suspect's effects immediately prior to or during the investigation. By increasing the number of outcome determinative decisions police and courts will have to make in numerous cases, the court below has moved away from the ideal of setting "a single familiar standard," *Dunaway v. New York*, 442 U.S. 200, 213 (1979), that provides "clear and unequivocal guidelines to the law enforcement profession," *Acevedo*, 500 U.S. at 577 (quotation omitted). The court neglected the practical difficulties that police in the field will have drawing additional lines or that courts will have in reviewing the lines they draw.

While in many cases determining which occupants in the car may reasonably be suspected of having concealed contraband in the vehicle will prove relatively simple, in other cases the line between suspect and non-suspect occupants will be more difficult to draw. For example, in this case, had Young not told Officer Baldwin that he used the hypodermic syringe that was protruding from his shirt pocket to take drugs, but rather had said that "we" used it, would Officer Baldwin have had probable cause to believe that all the occupants were complicit in transporting drugs in the car? Under *Ross*, the answer to the

question would not change the legitimate scope of the search; under the Wyoming Supreme Court's rule it would.

Even when the police can readily distinguish between suspect and non-suspect occupants, they will also have the difficult task of determining which containers capable of concealing the object of the search belong to non-suspects. The Wyoming court attempted to solve that dilemma by allowing police to presume that all containers in the car are within the scope of the car search, unless they have or should have knowledge to the contrary. (Pet. App. 15-16). This "notice" solution ultimately fails because it offers no coherent, workable definition as to what constitutes sufficient notice to police that a container belongs to a non-suspect occupant. None of the possibilities are enticing. Tying police knowledge to the occupants' claims about ownership is rife with danger, as is illustrated by the initial dishonesty exhibited by Houghton in this case.[1] Likewise, tying police knowledge of a container's ownership to its appearance would generally be pointless,

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[1] Initially, Houghton gave police a false name "in case things went bad," and it was only after the police had found her driver's license in the purse that she acknowledged that she owned it. (Pet. 3). This demonstrates the danger of relying on the honesty of the car's occupants to ascertain ownership of personal belongings capable of concealing the object of the search. It also illustrates that the decision below actually turned on a fortuity. Had the police discovered drugs in Houghton's purse before the driver's license, and not the other way around, they would not have had notice that the purse belonged to a then non-suspect occupant of the car. That the Wyoming Supreme Court's rule might turn on fortuities makes it "perverse." *United States v. Chadwick*, 433 U.S. 1, 22 (1977) (Blackmun, J., dissenting).

except in the unusual case that all the containers in the vehicle have labels identifying their owners.[2]

And even when the police can neatly divide the car's occupants into suspects and non-suspects, and are likewise able to match all the containers within to their true owners, the task of conducting the car search consistent with these determinations will often be practically difficult. In cases involving several occupants, each one having several personal effects in the car, an officer might easily become confused and inadvertently search a container previously identified as belonging to a non-suspect occupant or fail to search a container presumed within the scope of the car search.

The Wyoming Supreme Court created still more practical problems by making an exception when the suspect occupant "had the opportunity to conceal the contraband within the personal effects of the [non-suspect occupant] immediately prior to" the police investigation. Questions abound. Will it be sufficient that a suspect had the opportunity even if the officer did not see any action showing that the suspect concealed the contraband? What is "immediately"? What if the car does not promptly pull over when the officers put their lights on? This is one more tough judgment call that an officer – and the courts – will have to make.

By adding several extra determinations to the *Ross* rule, the court below has significantly complicated the equation for law enforcement officers. If adopted as the law of the land, the new

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[2] Even when the appearance of a container gives substantial clues about its owner, the clues will not be sufficient. For instance, in this case, had all the occupants of the car been men, what inferences should Officer Baldwin have drawn upon finding a "lady's purse?" (Pet. App. 17).

rule would engender a higher volume of Fourth Amendment litigation and would likely lead to inconsistent results in the lower courts, as reasonable jurists would differ in their resolutions of the close questions that would certainly arise.

C. The Wyoming Supreme Court's Rule Is Anomalous

The final problem with the rule created by the court below is that it is anomalous in comparison to the rule governing the scope of car searches incident to arrest. In *New York v. Belton*, 453 U.S. at 460, the Court held that, when an officer makes a lawful custodial arrest of a motor vehicle occupant, he may contemporaneously search the passenger compartment of the vehicle, including any containers found therein. Thus, had the car search in this case been initiated incident to Young's arrest, Houghton's purse would have been within the scope of the search.

That outcome makes little sense given that, although the rationales of the two types of car search are not identical, both attempt to protect against evidence being moved or destroyed. One of the principal rationales supporting car searches incident to arrest is that, at the time of his arrest, the arrestee might reach into the car and gain possession of destructible evidence. *Belton*, 453 U.S. at 460. Similarly, car searches based on probable cause are designed to prevent the loss or further concealment of evidence of crime. *Ross*, 456 U.S. at 806-07. The scope of a car search based on probable cause should, therefore, be no less than that of a car search incident to arrest. Indeed, it would be incongruous that in a *Belton* search, even though the police might have no reason to believe that contraband is concealed in a car, a purse found on the back seat of the car would fall within the scope of the search, but in a car

search entirely justified by probable cause to believe that contraband is hidden in the car, the same purse could not be searched. The rule below and *Belton* cannot coherently coexist.

CONCLUSION

The judgment of the Wyoming Supreme Court should be reversed.

Respectfully submitted,

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